

Exhibit “8”

Transcript of the Testimony of

Matthew L. Fuqua

November 4, 2014

Butler v. American Family

No. 3:14-cv-05305 RBL



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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEFF BUTLER, individually and as)
the representative of all persons)
similarly situated,)

Plaintiffs,) No. 3:14-cv-05305 RBL

vs.)

AMERICAN FAMILY MUTUAL INSURANCE)
COMPANY and AMERICAN STANDARD)
INSURANCE COMPANY OF WISCONSIN,)
foreign insurers,)

Defendants.)

DEPOSITION OF MATTHEW L. FUQUA
November 4th, 2014
Seattle, Washington

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10 AMFAM_M000328 through
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12 Exhibit No. 2 10-page Autosource document 31
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13 Guide, American Family,"
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15 Exhibit No. 3 1-page affidavit dated 8/12/2014 55
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19 Guidelines," dated 2/2014,
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21 Exhibit No. 5 1-page document entitled, "ICS: 80
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24 AMFAM_M000011
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1 APPEARANCES

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1 EXHIBIT INDEX (continued)
2 EXHIBIT NO. DESCRIPTION PAGE NO.
3 Exhibit No. 7 1-page document entitled, "ICS: 84
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4 Transactions," prepared 7/29/2014
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5 AMFAM_M000044
6 Exhibit No. 8 14-page document entitled, "ICS: 86
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7 dated 7/29/2014, AMFAM_M000045
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9 Exhibit No. 9 3-page document entitled, "First 87
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11 Exhibit No. 10 2-page ISO claim search match 88
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13 Exhibit No. 11 2-page e-mail to Carrie Bartley 89
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14 evaluation assessment attached,
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15 AMFAM_M000080
16 Exhibit No. 12 13 pages of e-mail between 91
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17 Stephen Hansen, Debra Hayes,
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18 Harber, Bryce Hilden and Matt
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19 HARBER000131
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Matthew L. Fuqua
November 4, 2014

<p>1 EXHIBIT INDEX (continued)</p> <p>2 EXHIBIT NO. DESCRIPTION PAGE NO.</p> <p>3 Exhibit No. 15 3-page estimate dated 8/1/2014, 102 HARBER000051 through HARBER000053</p> <p>4</p> <p>5 Exhibit No. 16 4-page document pertaining to 110 Supplement 1, HARBER000047 HARBER000050</p> <p>6</p> <p>7 Exhibit No. 17 5-page e-mail to Mike Harber from 110 Matt Fuqua pertaining to Supplement 2 dated 10/31/2014</p> <p>8</p> <p>9 Exhibit No. 18 12 pages of e-mails between 116 Connie Pejka, Mike Harber, John Roberts, Scott Nealey, Matt Fuqua, and Bryce Hilden, HARBER000134 through HARBER000135</p> <p>10</p> <p>11 Exhibit No. 19 2 pages of e-mails between Mike 117 Harber and Matt Fuqua, HARBER000152 through HARBER000153</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 5</p>	<p>1 wait 3 or 4 seconds before you respond.</p> <p>2 A Okay.</p> <p>3 Q Perfect. And she cannot take nonverbal responses, so</p> <p>4 frequently in conversations we nod or something like</p> <p>5 that. You have to say like you did; okay?</p> <p>6 A Okay.</p> <p>7 Q Perfect. And a couple seconds also gives an opportunity</p> <p>8 for your counsel to object, if he wishes to. Those are</p> <p>9 for the record. If he instructs you not to answer or you</p> <p>10 need to take a break, you can obviously take one, but you</p> <p>11 need to answer the question unless he instructs you not</p> <p>12 to; understood?</p> <p>13 A I understand.</p> <p>14 Q Okay. And if anything I say is unclear to you, if I use</p> <p>15 terminology -- or sometimes I mix up dates; I get the</p> <p>16 year wrong. I mean, we do all these sorts of things. If</p> <p>17 there's anything about my question that's unclear or you</p> <p>18 don't understand, feel free to let me know.</p> <p>19 A Okay.</p> <p>20 Q Okay. And sometimes during the deposition we will answer</p> <p>21 and you'll come back and realize after you left the room</p> <p>22 that you've -- you either said something you think might</p> <p>23 not be right or you remember some extra details. Feel</p> <p>24 free to come back on. You can just say, "I remembered</p> <p>25 something extra," or, "I remember a little differently,"</p> <p style="text-align: right;">Page 7</p>
<p>1 BE IT REMEMBERED that on Tuesday,</p> <p>2 November 4th, 2014, at 1700 Seventh Avenue, Suite 1810,</p> <p>3 Seattle, Washington, at 9:35 a.m., before Laura L. Ohman,</p> <p>4 Certified Court Reporter, CCR, appeared MATTHEW L. FUQUA,</p> <p>5 the witness herein;</p> <p>6 WHEREUPON, the following proceedings</p> <p>7 were had, to wit:</p> <p>8</p> <p>9 <<<<<< >>>>>></p> <p>10</p> <p>11 MATTHEW L. FUQUA, having been first duly sworn by the</p> <p>12 Certified Court Reporter, testified as</p> <p>13 follows:</p> <p>14</p> <p>15 EXAMINATION</p> <p>16 BY MR. NEALEY:</p> <p>17 Q Mr. Fuqua, we met briefly.</p> <p>18 And have you ever been deposed before?</p> <p>19 A No.</p> <p>20 Q Okay. I'm sure your lawyer told you the rules, but I'll</p> <p>21 give them to you so that nobody can say that I didn't at</p> <p>22 the beginning of the deposition.</p> <p>23 We have a court reporter here and she is taking down</p> <p>24 whatever we say. And she can only take down one person</p> <p>25 at a time, so I will try to end cleanly, but you might</p> <p style="text-align: right;">Page 6</p>	<p>1 and we'll just put it on the record; fair?</p> <p>2 A Fair enough.</p> <p>3 Q Okay. And then, at the end, the reporter will type up</p> <p>4 the question and answer and you'll have an opportunity to</p> <p>5 review that and to make any changes or additions to it</p> <p>6 you think are necessary; however, if there were to be a</p> <p>7 trial of this matter, we can, in the State of Washington,</p> <p>8 comment on any changes or additions that are made to the</p> <p>9 transcript, so to the extent you can fix something today</p> <p>10 or -- accuracy is appreciated to this point; understand?</p> <p>11 A I understand.</p> <p>12 Q Okay. Any questions?</p> <p>13 A Not yet.</p> <p>14 Q Okay. And, sir, can you just spell your name for the</p> <p>15 record.</p> <p>16 A It's Fuqua, spelled F-u-q-u-a.</p> <p>17 Q And then that helped me too because I was going to ask</p> <p>18 you how to pronounce your name and now I know how.</p> <p>19 Okay to call you "Matt"?</p> <p>20 A That's fine.</p> <p>21 Q Okay. And, Matt, what is your current title with Am Fam?</p> <p>22 A Certified repair program senior reinspector.</p> <p>23 Q Certified repair program reinspector?</p> <p>24 A Yeah.</p> <p>25 Q Okay. Is that a line position, or is that a management</p> <p style="text-align: right;">Page 8</p>

1 position?
 2 **A It's a line, non-manager.**
 3 Q Non-manager; okay.
 4 And what is your -- what is your territory that you
 5 work within?
 6 **A Primarily from as far north as Auburn and then down south**
 7 **to Longview, and there's also a handful of shops in**
 8 **Eastern Washington in the Spokane area, Tri-Cities and a**
 9 **couple in northern Idaho.**
 10 Q Okay. Now, you say as far north as Auburn.
 11 Is that just that you don't have any DRP shops north
 12 of Auburn, or...?
 13 **A We do. There are two of us in the state, and that's kind**
 14 **of the line that divides our territories.**
 15 Q Okay.
 16 **A We back each other up whenever one of us is off, but**
 17 **that's as far as my shops go.**
 18 Q Okay. And Longview is obviously on the Oregon border or
 19 pretty close --
 20 **A Correct.**
 21 Q -- so... (Pause.)
 22 Okay. Okay. And how many certified repair facility
 23 shops are within your territory?
 24 **A 22 to 24.**
 25 Q Do you know approximately how many repairs they do a

Page 9

1 year? I just -- I don't --
 2 **A Right.**
 3 Q Just an estimate, if it's a thousand or two thousand.
 4 **A Between around --**
 5 MR. BENNETT: Well, excuse me. For Am
 6 Fam?
 7 MR. NEALEY: Yeah. Just for Am Fam.
 8 THE WITNESS: For the whole state?
 9 Q (By Mr. Nealey) Well, I mean, if you can give it to me
 10 for the state, that's great. If there's two of you
 11 guys --
 12 **A I have --**
 13 Q -- that's fine.
 14 Yeah.
 15 **A I have approximately 22 to 24 hundred --**
 16 Q Okay.
 17 **A -- repairs a year.**
 18 Q And when you say "repairs," does that include both
 19 first-party and third-party repairs?
 20 **A Yes.**
 21 Q Okay. And are half of those first party and half of them
 22 third party or a few more of them are first party?
 23 **A I would say the majority of them are first party.**
 24 Q Like 60, 70 percent, or...?
 25 **A That's reasonable.**

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1 Q Okay. Now, I know under the DRP program -- and I have
 2 the guidelines that you do reinspections of a certain
 3 number of vehicles.
 4 What percentage of the first-party repairs do you
 5 guys do reinspections on?
 6 **A I wouldn't be able to necessarily break it up in first**
 7 **party versus third party.**
 8 Q Okay.
 9 **A I reinspect approximately maybe 20 a month.**
 10 Q Okay.
 11 **A And just to clarify, that's in person. I'm also auditing**
 12 **from a desk many more than that.**
 13 Q Okay. And I understand that.
 14 And certain -- and when you say reinspect from the
 15 desk, you have access on any claim to any photographs
 16 that are in the file -- to the claim file and then to the
 17 repair estimates; right?
 18 **A Correct.**
 19 Q And so if you have a question or need to do something,
 20 you can either look at the photographs, if there are any
 21 in the repair estimates, or, if necessary, you can go
 22 look at the car?
 23 **A Correct.**
 24 Q Okay. Now, when you do the reinspections, 20 per month,
 25 what portion of those are just reinspections that you do

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1 to see if the shops are doing what they need to do as
 2 opposed to reinspections because there's a particular
 3 issue that's arisen with the customer or the shop that
 4 needs to be addressed?
 5 **A Majority are just random reinspections.**
 6 Q Okay. And those are to see that the shops are doing what
 7 they're supposed to be doing?
 8 **A Correct.**
 9 Q Okay. And when say a "majority," are we talking 12, 13 a
 10 month or 14 a month or almost all of them?
 11 **A I wouldn't give a number, but maybe more of a percentage**
 12 **of 90 percent.**
 13 Q Okay.
 14 **A There might be a month where I've looked at more or,**
 15 **depending on my vacation schedule or workload, maybe I've**
 16 **looked at less, but I would say a high percentage of them**
 17 **are just random reinspects --**
 18 Q Okay.
 19 **A -- that were at the shop while I was there.**
 20 Q Okay. And you don't go to look at a particular repair;
 21 you go to the shop and see, knowing that there might be a
 22 couple of Am Fam vehicles in the shop, and you just look
 23 at those?
 24 **A Not every time. Sometimes I'm going to a shop for a**
 25 **particular repair.**

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3 (Pages 9 to 12)

1 Q Okay. And that wouldn't be one of these random ones;
 2 those would be -- or would they be random?
 3 A No. If I'm going to a shop to look at a particular
 4 repair, it's probably not for a random reason. I've
 5 identified some reason I want to see it in person.
 6 Q Okay. So, for example, in this -- well, the vehicle
 7 involved in this lawsuit, Bryce Meyer's car, when you
 8 went, that wasn't a random inspection; you just went
 9 because there were issues with the Bryce Meyer repair and
 10 you wanted to look at the car?
 11 A When I looked at it the first time while the repairs were
 12 in process, it was a random reinspection.
 13 Q Okay. When did you do a random reinspection of it?
 14 A I would have to look at the date. It was while the
 15 repairs were in process. I would say somewhere in I
 16 think May.
 17 Q Okay.
 18 A I would have to double-check when it was.
 19 Q Okay. That's a detail that I guess I missed, so I'm
 20 happy to know it.
 21 So you did a random reinspection of the vehicle when
 22 it was in Barrett's originally?
 23 A Yeah.
 24 Q Okay. Did you take photographs at the time?
 25 A I typically take one or two photographs just to show I

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1 was there and I looked at it. Almost every time -- there
 2 are occasional times where the photographs don't make it
 3 in or I forgot to, but I would say out of almost nearly
 4 all, I'll take one or two photos.
 5 Q Okay. So you did look at Bryce Meyer's vehicle when it
 6 was in the process of being repaired? Is it -- the first
 7 time -- let me -- so that the questions are a little
 8 clearer, there was a first repair that took place in the
 9 time frame of April to May 2014 at Barrett's; correct?
 10 A That sounds about right.
 11 Q And just for ease, can we just call that the first
 12 repair, the Barrett repair?
 13 A That's fine. Either --
 14 Q Okay.
 15 A -- is fine with me.
 16 Q Okay. And then there's a second set of repairs which
 17 took place in the -- in the July and forward which were
 18 done at Metro Auto Rebuild?
 19 A Correct.
 20 Q Okay. And we'll call those the second repairs.
 21 A Okay.
 22 Q So in the first set of repairs, you looked at the vehicle
 23 when it was at Barrett's.
 24 At the time, what were you inspecting the vehicle
 25 for?

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1 A I don't recall if -- how far along the repairs were, but
 2 it's a situation while I was at the shop and they had --
 3 that vehicle was there, so I got a copy of their estimate
 4 just to look it over to make sure I agreed with the
 5 estimate. And, at that time, I didn't make any changes
 6 to their estimate. I don't remember the particulars of
 7 what I -- of -- let me rephrase it. Basically, I didn't
 8 see anything that warranted changing of the estimate.
 9 Q Okay. Now, when you look at the estimate, was the
 10 vehicle partially disassembled at the time, or was it in
 11 its crashed condition?
 12 A I believe it was torn down.
 13 Q Torn down?
 14 A Disassembled.
 15 Q Okay. But they hadn't actually started to reassemble
 16 the car and do the repair work on it?
 17 A I would have to review the photos. I -- if I remember
 18 correctly, it was not started yet, but I could be wrong
 19 about that.
 20 Q Okay.
 21 A It was either in the early stages of the repair or they
 22 hadn't started.
 23 Q So when you're doing the reinspection, are you inspecting
 24 to see if the damage shown on the estimate reflects the
 25 damage you see on the vehicle, or are you reinspecting

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1 for some other reason?
 2 A There's a variety of reasons I would reinspect it. One
 3 is to make sure I agree with the shop's decisions of the
 4 repair or replace decision; their part usage, used
 5 aftermarket OEM to make sure they're following our
 6 guidelines; and then also looking to see if there's any
 7 damage that they may have put on their estimate that I
 8 don't -- that I'm questioning as it relates to the loss.
 9 Q Okay.
 10 A So on a random inspection, I don't -- I'm looking for
 11 anything, but typically find nothing of -- in this case,
 12 I made no changes.
 13 Q So if I were to summarize, the first thing you mentioned
 14 is you're looking to see if they're making what you would
 15 consider to be appropriate decisions on replacing parts
 16 as opposed to repairing them, and that's because when you
 17 replace parts, it tends to be more expensive than to
 18 repair them all?
 19 A It's not an issue of cost. It's an issue of what's the
 20 right repair for this job.
 21 Q Well, would you agree that especially if they're not --
 22 they are a non-OEM replacement, that buying new parts, on
 23 average, is going to be more expensive than repairing
 24 them?
 25 A It would depend on how much repair. There are some

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4 (Pages 13 to 16)

1 panels that would cost more to repair, and there's
 2 also -- there's more factors than just repairing versus
 3 the cost. There's associated operations with replacing a
 4 panel that would make it more costive [sic] to replace,
 5 or if it's a -- not a very expensive panel, it's a
 6 bolt-on versus a weld-on, it might be more cost-effective
 7 to replace versus repair; however, it's still more of a
 8 decision of what's the best decision for that repair.
 9 Q But when you're making that decision and looking at the
 10 estimate, I mean, are you often finding yourself in a
 11 situation where you think they're, for instance,
 12 repairing the part or replacing the part and you think
 13 they should do the opposite that would cost more money?
 14 Does that happen more often?
 15 A Can you rephrase -- can you repeat that?
 16 Q Do you find yourself on reinspections very often in a
 17 situation where you look at the estimate and the estimate
 18 done by the DRP shop calls for, say, repairing the par
 19 and, yet, when you look at it, you decide that you should
 20 spend more money and replace the part that you're --
 21 you're changing the estimate to do a more expensive
 22 repair process?
 23 A I can't recall off the top of my head times I've done
 24 that, but there have been times when they might have
 25 repaired a part and I'll ask the technician or the -- or

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1 the estimator, "Are we going to repair this panel," and
 2 he says, "Well, we're going to do an attempted repair,"
 3 and then might put an hour or two into it and change
 4 their mind. I would not -- I don't recall a time where I
 5 have seen a repair decision made by the shop where I
 6 adamantly disagreed with their decision, because
 7 ultimately they stand behind their work and they're not
 8 going to do a repair if they can't end with a quality
 9 product, but, once again, there have been times where
 10 they have attempted a repair and then changed their mind.
 11 Q Okay. So would it be fair to say that the vast bulk of
 12 time when you're look at the distinction between repair
 13 and replace you're finding that the estimate is going the
 14 direction that is going to end up costing more money than
 15 a different course and... (Inaudible.)
 16 THE COURT REPORTER: What was that
 17 last part?
 18 Q (By Mr. Nealey) That it will -- the repair shop is going
 19 a direction that will end up costing more money and you
 20 intervene and suggest they go a different direction.
 21 A Could you rephrase the question?
 22 Q Okay. Yes, I can.
 23 A I think I understand your question, but I want to --
 24 Q Yes. I want to be clear.
 25 If I'm understanding your testimony, there are a few

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1 times when you've come and had discussions with them and
 2 it looks like the repair shop might be going down a
 3 repair route and it's been a couple of hours and spent
 4 some money trying to repair and end up having to replace
 5 anyway and you intervene at that point because you think
 6 it would end up costing more money to do that.
 7 A No. I would disagree with that.
 8 Q Okay.
 9 A There might be times when I've questioned "is this the
 10 right thing to do for this job? Is repairing or
 11 sometimes replacing the right thing to do?" And I will
 12 discuss it with the slop. But the cost -- what's the
 13 least expensive option is not a very important factor for
 14 me. It's what's right for the job.
 15 Q And I understand that in the overall.
 16 My questions are a little more specific. And maybe
 17 I'll just ask it this way: Can you recall a time when
 18 you have come and you've got an estimate in front of you
 19 from the DRP shop and you have said, "No, instead of
 20 repairing it, I want you to replace it," or, "Instead of
 21 replacing it, I want you to repair it," and you increase
 22 the amount of the estimate because you think it should be
 23 done a different way; you actually increased the amount
 24 you're going to pay on the repair?
 25 A There have been times when, after my reinspection, the

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1 estimate has gone up because of changes I've identified
 2 or made, either additional damage that I found or parts
 3 decisions that I've not agreed with. I would say my goal
 4 is not to make the estimate go down but to make sure it's
 5 following our guidelines and is accurate.
 6 Q And I understand that you may when you look at the things
 7 see something that somebody has missed, but putting aside
 8 when you see something they've missed, when you've gone
 9 and the decision is being made to repair or replace a
 10 part on a vehicle and the body shop -- the DRP shop has
 11 made a recommendation, can you think of a time when you
 12 said, "No, I want you to do it the opposite way," repair
 13 versus replace, and then as a result of that, you had
 14 increased the amount that would be on the estimate?
 15 MR. BENNETT: Object to asked and
 16 answered.
 17 THE WITNESS: I can think of times
 18 where I have questioned their decision to replace a
 19 panel, and after discussing it with the shop, I
 20 ultimately agreed with their decision. I cannot think of
 21 a time where I've disagreed with a shop and they've
 22 disagreed with me and they conceded to what I wanted and
 23 then repaired something they didn't feel comfortable
 24 repairing.
 25 Q (By Mr. Nealey) Can you think of a time where you've

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1 gone and increased the estimate for the repair by
 2 disagreeing with the decision of repair versus replace?
 3 **A I cannot think of a specific time, no.**
 4 Q Okay. Now, the second one you did was parts usage, and
 5 that involves whether you use recycled or aftermarket or
 6 new parts; correct?
 7 **A Correct.**
 8 Q And when DRP shops are doing repairs for Am Fam, they're
 9 supposed to use recycled parts, if they're available, and
 10 then non-OEM and then only then new parts; correct?
 11 **A We have guidelines to follow that when we want them to**
 12 **look for used or aftermarket or reconditioned parts over**
 13 **new OEM.**
 14 Q And one of the issues you're looking for in a
 15 reinspection is whether they inspect -- checked to see if
 16 there are recycled parts or new aftermarket parts, and if
 17 they fail to do so, that's one of the things you flag on
 18 your inspections; right?
 19 **A If there are times when there's an aftermarket or**
 20 **recycled part available and it's not on the estimate, I**
 21 **ask for a reason why. And there's plenty -- there are**
 22 **acceptable reasons why not. It starts as a question why,**
 23 **and then I'll determine if they've made the wrong**
 24 **decision or not.**
 25 Q But -- and I recognize that. I mean, sometimes the part

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1 turns out not to be available or sometimes it's so far
 2 away that it will delay the repair. I mean, there's a
 3 lot of reasons, but one of the things you're looking for
 4 when you're doing these inspections is not just repair
 5 versus replace, the second thing you're looking for is
 6 whether they've followed the American Family guidelines
 7 for use of recycled or used parts and then non-OEM parts
 8 before using OEM parts; right?
 9 **A I would agree with that.**
 10 Q And the third thing you mentioned is you want to check
 11 the damage on the vehicle.
 12 Is that to make sure that things aren't on the
 13 estimate that don't need to be repaired?
 14 **A Correct.**
 15 Q Okay. Okay. How often when you go out and do a
 16 reinspection -- and I'm just talking about the random
 17 reinspections, not when you have a particular issue, but
 18 when you do a random reinspection, how often when you
 19 look at the car do you find additional damage that's not
 20 listed on the estimate and you add it?
 21 **A I wouldn't be able to give you a percentage. It's not**
 22 **common, but it is something that happens a few times, and**
 23 **it would be hard to put a number or a percentage. It's**
 24 **not a rare thing, but it's not uncommon either.**
 25 Q Okay. Now, when you're doing these reinspections, during

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1 the repair process, your goal is to see if the Am Fam
 2 guidelines have been followed; is that correct?
 3 **A Correct.**
 4 Q And do you have a particular standard that you're trying
 5 to meet in the repair process?
 6 **A What do you mean by "standard"?**
 7 Q Well, are you familiar with the term pre-loss condition?
 8 **A I am.**
 9 Q Okay. Are you doing an inspection when you do a
 10 reinspection to see if the vehicle is in pre-loss
 11 condition?
 12 **A Some of my reinspections may be done after the repairs**
 13 **are completed, so I am looking over that -- the items on**
 14 **the estimate have been addressed and look over it for any**
 15 **defects in the repairs to bring it to the shop's**
 16 **attention so they can correct them before the customer**
 17 **picks them up.**
 18 Q Okay. But when you're doing these reinspections when the
 19 vehicle is in the process of repair, that's not an
 20 inspection to see if the vehicle is in pre-loss
 21 condition; right?
 22 **A I can see on the -- I'm looking at the estimate to make**
 23 **sure that all the items that will be addressed will bring**
 24 **it to pre-loss condition, but since the repairs are in**
 25 **process, I won't know everything is done until the**

Page 23

1 **repairs are done.**
 2 Q Okay. How often do you go and inspect cars as part of
 3 this process that have been completely repaired and look
 4 at the finished car?
 5 **A Once again, that's random. If I'm at the shop and there**
 6 **happens to be one that's done and happens to be out in**
 7 **front before the customer picks it up, which might be a**
 8 **one-day window, then I would on some of these reinspect**
 9 **it, so a few a month.**
 10 Q Do you note someplace in the file if -- when you do that,
 11 a vehicle has been fully restored to pre-loss condition?
 12 Do you make any notations or any indications about that?
 13 **A I don't use that terminology. If it's -- the repairs are**
 14 **done, I'll typically say something like, "I inspected the**
 15 **vehicle after repairs completed. No issues found."**
 16 Q Okay.
 17 **A Or just, "I reinspected the vehicle. No issues."**
 18 Q Now, you are currently the -- one of the two certified
 19 repair program reinspectors.
 20 How long have you worked for Am Fam?
 21 **A Approximately, six years.**
 22 Q So that takes us back to 2008, approximately.
 23 **A Approximately.**
 24 Q What did you do before 2008?
 25 **A I worked at Progressive Insurance.**

Page 24

6 (Pages 21 to 24)

1 Q Okay. Same job with Progressive?
 2 A **Similar. I was a claims adjuster.**
 3 Q Okay.
 4 A **I had a few different roles.**
 5 Q How long did you work for Progressive?
 6 A **Approximately, five to six years.**
 7 Q Okay.
 8 A **I believe from '02 to '08.**
 9 Q Okay. And what did you do before '02?
 10 A **I was in college.**
 11 Q College. Where did you go to college?
 12 A **University of Washington.**
 13 Q Okay. Have you ever had any -- have you ever worked in a
 14 body shop or ever worked in auto collision repair?
 15 A **No.**
 16 Q Okay. What was your undergraduate in?
 17 A **Computer science.**
 18 Q Okay. Have you ever taken any courses on auto body
 19 repair or auto body techniques?
 20 A **I've taken I-CAR classes as well as a Chief class on**
 21 **frames.**
 22 Q Okay. Which I-CAR classes did you take?
 23 A **I couldn't remember, but I think I took 20 to 15 total**
 24 **over maybe a two- to three-year period. There was a**
 25 **period where I was I-CAR-certified, and the only reason**

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1 **I'm not, I believe there's continuing education you need**
 2 **to do, but I don't remember every class I took.**
 3 Q Okay. And the I-CAR classes are usually a couple of
 4 hours?
 5 A **Yeah. I think they're one to two hours in a classroom.**
 6 Q Okay. And the Chief is a particular type of frame
 7 machine; correct?
 8 A **I believe so, yes.**
 9 Q Okay. And you had a -- you take the introductory courses
 10 and then the hour course, or did you take a longer --
 11 A **I took -- I took the long course. It was several days.**
 12 Q Several days; okay.
 13 Did any of your I-CAR courses, did they involve
 14 painting?
 15 A **I believe I took one on refinishing.**
 16 Q Okay. And you understand that the aftermarket collision
 17 repair, the paint process is different than that used in
 18 the original OEM factories; right?
 19 A **My understanding, yeah, it's not painted the same way as**
 20 **from the factory.**
 21 Q Yeah. And when they build it in what's called a body
 22 shop in the original OEMs, they heat the entire vehicle
 23 and then spray the paint on them; right?
 24 A **Can you -- what was the question?**
 25 Q I said the -- the process is not the same and one of the

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1 differences is when they paint in the factory, they paint
 2 without anything inside and they paint just the bare
 3 metal and they heat the whole thing up to a very high
 4 temperature; right?
 5 A **I don't know.**
 6 Q You don't know. Okay. You just know it's different.
 7 Do you know the differences?
 8 A **I believe in the factory they dip -- for one, they dip**
 9 **the entire body of the car, and then I believe when it's**
 10 **painted, it's painted on a factory line all at the same**
 11 **time.**
 12 Q Yeah, okay. And obviously you can't -- there's only so
 13 much you can do in repainting a car in the aftermarket.
 14 You've got to mask. And you can only get it so hot or
 15 you set the thing on fire; right?
 16 A **I couldn't speak to the temperature, but yes, there's**
 17 **only so much you can do.**
 18 Q Yeah, okay.
 19 Okay. Now, so the few a month that you inspect
 20 vehicles that have been completely repaired, do you just
 21 note in the file that you reinspected and that you saw no
 22 issues with the repair, or do you include photographs?
 23 Is it just a notation in the record?
 24 A **I'll typically take one or two photos not to document the**
 25 **repairs so much as to document I was there, and then I'll**

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1 **make a note that I reinspected it.**
 2 Q Okay.
 3 A **And just to clarify, it may have been a month or two**
 4 **since I've done one. There was a period of time where we**
 5 **did a lot more reinspections and I probably looked at**
 6 **them more frequently, but, once again, it's a random**
 7 **number. I could look at three this week. I could look**
 8 **at none for the next month --**
 9 Q Okay.
 10 A **-- unless it's a targeted inspection and there's a reason**
 11 **for me to go look at it.**
 12 Q And obviously -- maybe I'll put it this way, that since
 13 the only time you do a reinspection that wasn't targeted
 14 of a completed vehicle is more fortuitous, you happen to
 15 get there, the repairs are done and the customer hasn't
 16 picked it up, so... (Pause.)
 17 A **Correct.**
 18 Q But you're looking -- when you do those reinspections,
 19 you're looking to see if there are any obvious repair
 20 quality issues; correct?
 21 A **Correct.**
 22 Q Now, when you do a reinspection, do you walk around and
 23 look at the repair work, or do you actually do any
 24 disassembly on the vehicle?
 25 A **I just walk around.**

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1 Q Okay. Do you look underneath panels or remove anything,
 2 or do you just look at it visually?
 3 **A Look at it visually.**
 4 Q Okay. Do you use a -- do you know what a mil gauge is?
 5 **A I believe that's to measure the depth of the paint.**
 6 Q Yeah.
 7 **A No, I do not.**
 8 Q Okay. So you know what they are, but you've never used
 9 one?
 10 **A Correct.**
 11 Q Okay. Now, we've used the term "diminished value" in
 12 this lawsuit.
 13 You've obviously heard the word "diminished value"
 14 before; right?
 15 **A Yes.**
 16 Q Okay. What does "diminished value" mean to you, so I can
 17 use your terminology?
 18 **A I would say it's the potential loss in value of the**
 19 **vehicle from before the loss to after the loss.**
 20 Q Okay. So it's the potential difference between the
 21 pre-accident value of the vehicle and its -- the value it
 22 would have as a fully repaired vehicle?
 23 **A I would agree with that.**
 24 Q Okay. Now, have you received any training on the issue
 25 of diminished value from Am Fam?

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1 **A No.**
 2 Q Okay. Did you receive any when you were at Progressive?
 3 **A No.**
 4 Q Okay.
 5 **A To clarify, I was trained on how to -- to follow the**
 6 **process of evaluating them, but I haven't had any special**
 7 **training on them.**
 8 Q Okay. And I'll get to that in a second.
 9 Okay. Have you ever been provided or read or heard
 10 about a case from Washington State Supreme Court called
 11 Mueller Versus Farmers Insurance Exchange?
 12 **A I've heard of it, but I don't know all the details of it.**
 13 Q Okay. You know that's a DV case?
 14 **A That's a -- yes.**
 15 Q That's about the limit of your knowledge?
 16 **A Correct.**
 17 Q Okay. When that came out in 2011, did you get some
 18 guidance, or do you remember getting some guidance, or
 19 you just sort of heard about it informally, or how do you
 20 know about it?
 21 **A I would say I heard about it informally. I don't know**
 22 **when the first time I heard about it, but I would say I**
 23 **don't recall any formal notification of it.**
 24 Q Okay. Now, you did a DV assessment in this case --
 25 MR. NEALEY: Can I get a couple

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1 stickers?
 2 THE COURT REPORTER: Go ahead.
 3 MR. NEALEY: Thanks.
 4 If I don't mark numbers, I'll forget which I've
 5 used.
 6 (Exhibit No. 1 marked for
 7 identification.)
 8
 9 Q (By Mr. Nealey) I'm going to mark as Exhibit 1 a copy of
 10 a --
 11 MR. NEALEY: I actually happen to have
 12 an extra one.
 13 Q (By Mr. Nealey) -- of a diminished value assessment that
 14 was prepared on Mr. Meyer's vehicle, and it lists here
 15 Matt Fuqua as the administrative data.
 16 And I take it you're the one who had this run?
 17 **A Correct.**
 18 Q Okay. Did you receive any training on how to -- how to
 19 use the Autosource diminished value tool, or how did you
 20 learn how to use this?
 21 **A There was training done by Autosource, if I recall. I**
 22 **mean, those have a document on how to -- the process of**
 23 **how to determine what modifiers to select.**
 24 (Exhibit No. 2 marked for
 25 identification.)

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1 Q (By Mr. Nealey) Okay. I'm going to mark as Exhibit 2 --
 2 MR. NEALEY: I only have one copy, I'm
 3 afraid.
 4 Q (By Mr. Nealey) Is that the sort of guidance document
 5 that you've seen and looked at?
 6 **A Yes. I have a copy of that on my computer.**
 7 Q Okay. So Exhibit 2, when you go to do one of these, you
 8 pull up Exhibit 2 on your computer and it shows you how
 9 to follow one?
 10 **A Yes.**
 11 Q Okay. Now, I don't want to ask you any communication you
 12 might have had with counsel, so don't tell me anything
 13 you might have said, but how did you come to do a
 14 diminished value assessment on Mr. Meyer's vehicle?
 15 **A I was made aware through -- that he was making a**
 16 **diminished value claim from Bennett and I then evaluated**
 17 **it.**
 18 Q Okay. So is it the normal procedure whenever you hear
 19 that somebody is mentioning "diminished value" or making
 20 a diminished value claim that you would then go run one
 21 of these?
 22 **A When a diminished value claim has been assigned to me**
 23 **because they've made a claim to maybe the casualty**
 24 **adjuster who's assigned the claim, then I would start the**
 25 **process --**

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1 Q Okay.
 2 A -- of evaluating it.
 3 Q Okay. And so just describe for me what that process is
 4 for evaluating it. You know, in this case, an attorney
 5 did it, but let's assume -- you know, take the attorney
 6 out of the loop and you just hear from a claims adjuster
 7 that somebody has mentioned the word "diminished value"
 8 or they would like to make a claim for diminished value.
 9 What process do you follow?
 10 A First I'd be notified by either the casualty adjuster or
 11 my manager, and if it's appropriate for me to have it,
 12 then it will be assigned to me. I'll then send a letter
 13 to the owner of the vehicle saying -- to summarize, you
 14 know, "You're making a diminished value claim. Please
 15 provide us with this documentation to help us evaluate
 16 that claim," and then I would wait for a response.
 17 Q Okay. Now, do you make a coverage determination as part
 18 of it, or somebody has already determined there's
 19 coverage for diminished value before it gets to you?
 20 A That's been decided before it gets to me.
 21 Q Okay. So you send the letter to them and you ask for --
 22 and it's a form letter you have?
 23 A Yes.
 24 Q Okay. And that form letter asks for any information or
 25 any estimates on diminished value they might have; right?

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1 A There have been two different form letters. One is asked
 2 for -- which I don't use this one. The one asked for if
 3 they have any kind of appraisal or any kind of -- to
 4 support their diminished value amount.
 5 Q Okay. Now, when, then, do you go and run the Autosource
 6 diminished value tool?
 7 A Typically, I'll do it once they respond to the letter
 8 with -- and provide me with any documentation they --
 9 either that's outlined in the letter or if they don't,
 10 but once they respond, then we'll start evaluating it.
 11 Q Okay. Do you use any information that you get from them,
 12 the client -- well, I guess let me back up a moment.
 13 You use this tool for both first-party and
 14 third-party claims; right?
 15 A Correct.
 16 Q Okay. Do you use the same process for first party and
 17 third party, or is there some difference in how you
 18 assess these?
 19 A Same process, so I would double-check their limits. That
 20 would be the only difference.
 21 Q Understand.
 22 So when you use the Autosource tool, do you use any
 23 of the information that they give you as part of running
 24 the Autosource tool?
 25 A Sometimes.

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1 Q Okay. What would be the information that they would give
 2 you that you might use for the Autosource tool?
 3 A Service records to see if they've maintained it; previous
 4 losses, estimates that they've had in another claim that
 5 American Family wasn't aware of, they send me estimates
 6 so I can see what kind of damage was done. Primarily,
 7 I'm looking for the history of that vehicle --
 8 Q Okay.
 9 A -- as to how it was maintained and if it's been in an
 10 accident before.
 11 Q Okay. So I could summarize the only thing you're going
 12 to use from all the information you get from the owner of
 13 the vehicle in response to your letter would be any
 14 service records or anything that would show a prior loss
 15 on the vehicle?
 16 A I would not say that's the only. That is primarily what
 17 I'm looking for. There's other information that we
 18 require that will also give me insight as far as the
 19 ownership, possibly what they paid for the vehicle, and
 20 the -- and if it's -- if it has a clear title or not.
 21 Q Okay. So and then you run the Autosource tool. And I
 22 would just like to ask you what -- what the input
 23 sources -- looking at Exhibit 1 here.
 24 The first one is the total -- total condition
 25 adjusted market value. Where does that come from?

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1 A That number is derived from Autosource. I'm honestly not
 2 sure if it still uses NADA value to populate that number
 3 or it does it through its own market search that it has
 4 the capability to do.
 5 Q Okay.
 6 A Because, at that point, we've already entered all the
 7 options of the vehicle and the mileage, but that number
 8 is populated by Autosource.
 9 Q Okay. And, at one point, you know that Autosource was
 10 using NADA and you think they may sometimes be using that
 11 or something different at this point?
 12 A I'm not sure what their methodology is to come up with
 13 the market value for this report.
 14 Q Okay. What input is -- do you have to put in for it to
 15 come up with the adjusted market value?
 16 A I'm sorry. Can you repeat that.
 17 Q What input do you have to put in for it to come up with
 18 the adjusted market value?
 19 A Typically, that has already been inputted. It is pulled
 20 from the estimate written by the shop.
 21 Q Okay.
 22 A So it starts by decoding the VIN, and then you can
 23 manually select additional options. Some VINs now
 24 automatically will decode all options on the vehicle and
 25 sometimes you still have to go double-check options that

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9 (Pages 33 to 36)

1 may not have been selected, and I don't believe for the
 2 market value -- I don't know if that takes mileage into
 3 consideration because also there's a mileage adjustment.
 4 I assume for the market value there's already been a
 5 mileage adjustment for the -- for the value of the
 6 vehicle.
 7 Q Okay.
 8 A That would be -- I guess in this case would be a pre-loss
 9 value.
 10 Q Okay. Now, so that market value then is pulled from the
 11 information off the estimate, so you don't even have to
 12 input anything, it just populates the field?
 13 A That is correct. There might be circumstances where I
 14 double-check the options, but, otherwise, if it's simply
 15 I take the shop's estimate and start this report or if
 16 it's an estimate that a field adjuster has written, that
 17 number would already -- there would be -- it is potential
 18 that I'll make no changes to the existing estimate to get
 19 that number.
 20 Q Okay. Now, is that adjusted market value, is that a
 21 market value as of the time of the accident or the time
 22 of the report being run?
 23 A My understanding, it's based on the date of loss. So on
 24 this report, it says 4/14, so that would be the value at
 25 4/14.

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1 Q Okay. And so that's because when you're assessing a
 2 loss, you don't assess it at the date the claim is being
 3 made, months or -- or sometimes years later; you assess
 4 it as of the date of the loss; right?
 5 A That is correct.
 6 Q Okay. So Mr. Meyer's vehicle, according to this report,
 7 would have had a value on 4/14/14, which is the date of
 8 his accident, of \$24,225?
 9 A According to this report, yes.
 10 Q Okay. And these are reports that you run -- that Am Fam
 11 uses day in and day out in its normal business; right?
 12 A I don't know how often Am Fam uses it, but this is the
 13 report that I use.
 14 Q Okay. Okay. And, well, these values that are used for
 15 market value at the time of the accident, you also use
 16 these in settling total losses; right?
 17 A That's where I would say I don't know if the same
 18 methodology is used for this -- for a DV report versus a
 19 total loss report. It very well could be.
 20 Q Okay. Do you also use Autosource for total losses?
 21 A Yes, we do.
 22 Q Okay. Now, then there's a value adjustment, and that's
 23 10 percent.
 24 That is just a number that's thrown in there of a 10
 25 percent loss of value; right?

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1 MR. BENNETT: Object to the form.
 2 THE WITNESS: That is the starting
 3 point that Autosource uses for its methodology.
 4 Q (By Mr. Nealey) Okay. And that has been preset by Am
 5 Fam; right?
 6 A I don't know where that -- how --
 7 Q Okay.
 8 A -- to determine if that's Am Fam or Autosource.
 9 Q Okay. I'll direct you to Page 4 here and see if this
 10 reflects -- refreshes your recollection. If you look at
 11 Item 16, it says, "American Family has preset" [sic] "to
 12 use Autosource values and has" -- it's hard for me to
 13 read upside down, "and the starting diminished value is
 14 based on 10 percent of the fair market value of the loss
 15 vehicle."
 16 Does that refresh your recollection whether 10
 17 percent is set by Am Fam or it's set by Autosource?
 18 A I don't recall.
 19 Q Okay. That's fine.
 20 A I probably read this whole document early on and now use
 21 it as a reference, but that's the first time that part
 22 has been pointed out to me.
 23 Q Okay. But another way of putting it, whether 10 percent
 24 was set by Am Fam or it was set by Autosource doesn't
 25 really matter; you're using the tool that you've been

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1 given?
 2 A Correct.
 3 Q Okay. And, similarly, you have no information whether 10
 4 percent is a starting point for diminished value for Mr.
 5 Meyer's vehicle, whether that is accurate or not
 6 accurate? You don't have any information?
 7 A Can you rephrase the question?
 8 Q If we're going to start looking at a -- what they just
 9 call a value adjustment for diminished value, you don't
 10 know whether the value adjustment in reality on Mr.
 11 Meyer's particular vehicle, whether that would be 10
 12 percent or 20 percent or 5 percent or 15 percent?
 13 A I personally do not know.
 14 Q Okay. You're just relying on the number that's in the
 15 computer that -- you don't know whether it's accurate or
 16 not?
 17 A Well, I will clarify this is a guide for evaluating, but
 18 that is the number it starts with.
 19 Q Okay. Good.
 20 And then there's obviously a mileage modifier, and
 21 that would have been the mileage at the time of the
 22 accident on 4/14/2014; right?
 23 A Correct.
 24 Q Okay. And then there's a damage modifier, and you
 25 actually put in the damage modifier, and you picked that

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10 (Pages 37 to 40)

1 based upon the estimate; right?
 2 **A Correct.**
 3 Q Or does the computer do that?
 4 **A No. I select which modifier to use for the current**
 5 **damage.**
 6 Q Okay. And you determine then that looking at the
 7 modifier options that Mr. Meyer's vehicle had major
 8 damage to structure and panels; right?
 9 **A Based on the description given by Autosource, I selected**
 10 **that modifier.**
 11 Q Okay. And you're -- you're not doing this by looking at
 12 the vehicle; you're doing this by looking at the repair
 13 estimate; right?
 14 **A Yes, and also the photos of the damage at the time, but**
 15 **primarily looking at what was done on the vehicle.**
 16 Q Okay. So put it another way, you can run this Autosource
 17 diminished value without ever looking at the vehicle?
 18 **A I'm sorry. What?**
 19 Q You can run this Autosource diminished value report
 20 without ever looking at the vehicle?
 21 **A Without looking at it in person, yes.**
 22 Q Yes. And, in fact, you've done that number of times;
 23 right?
 24 **A Correct.**
 25 Q Okay. So you picked a -- the damage modifier of major

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1 damage to structure and panels, and there's a description
 2 down here.
 3 **A Are you looking for the description of the modifier?**
 4 Q Yes.
 5 **A I think it's the last -- close to the last page.**
 6 Q There you go. You're right.
 7 What about Mr. Meyer's vehicle led you to say that
 8 it had major damage to structure and panels as opposed to
 9 having moderate damage to structure and panels or severe
 10 damage to structure and panels?
 11 **A Well, what I would do is typically start the most severe**
 12 **one and see if it qualifies. In this case, it did not**
 13 **qualify for severe damage based on their description.**
 14 **For major damage, it says it requires to replace in three**
 15 **or more panels, which it did, which his vehicle did have**
 16 **done, and -- and use the word "and" "repair or**
 17 **replacement of a frame assembly or repair to frame or**
 18 **unibody," which, in this case, his vehicle did.**
 19 Q Okay.
 20 **A And for moderate, it -- once it qualifies for major, it's**
 21 **obviously beyond moderate damage.**
 22 Q Okay. So you work up and -- and since he had three or
 23 more panels and frame or structural damage, it was major.
 24 What -- what caused you to say that it was not
 25 severe damage to structure and panels?

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1 **A Well, it says a lot of components, so I'll just take them**
 2 **one at a time. It says, "Replacement of one or more**
 3 **major components required": "Engine," which it did not;**
 4 **"complete corner suspension," which I don't believe it**
 5 **did; or front and rear assembly, which it did not; and --**
 6 **well, now that it has the word "and," it had none of**
 7 **those components in it, so, therefore, it did not qualify**
 8 **for severe.**
 9 Q Okay. Okay. And moderate damage to structure and panels
 10 is a 50 percent adjustment, can just be body damage
 11 without frame and structure; is that correct?
 12 **A Can you repeat the question?**
 13 Q The difference between moderate damage and -- and major
 14 damage is that major damage has additional structural
 15 frame damage; right?
 16 **A Correct. In addition to that, it says -- for moderate,**
 17 **it says repair to three or more panels or replacement of**
 18 **two, while major requires replacement of three or more**
 19 **panels.**
 20 Q Okay. How about a vehicle that had like eight panels on
 21 it that were repaired, none of them replaced and you had
 22 frame and structure damage; would you consider that to be
 23 major damage or moderate damage?
 24 **A Where no panels were replaced, so it's exterior damage to**
 25 **every panel, let's say, and there was frame damage of**

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1 **some kind?**
 2 Q Yeah.
 3 **A By this terminology, that would not be major damage**
 4 **because there was no replacement of any panels.**
 5 Q Okay. Okay. But in drawing a distinction between
 6 moderate damage and major damage, what puts Mr. Meyer's
 7 vehicle in major damage versus moderate is the fact he
 8 had frame or structural damage as well?
 9 **A That is one of the differences in addition to three or**
 10 **more panels being replaced.**
 11 Q Okay. Okay. And then prior damage, you found that there
 12 was no prior damage of Mr. Meyer's vehicle; is that
 13 correct?
 14 **A Correct.**
 15 Q Okay. And how did you go about finding there was no
 16 prior damage to Meyer's vehicle?
 17 **A After the vehicle was repaired, there was not any prior**
 18 **damage that I was aware of.**
 19 Q Okay. I don't -- you mean as part of the repair process,
 20 nobody noted that there had been prior damage?
 21 **A I don't recall. I don't know. I would have to review**
 22 **the initial claim when they took the file if they noted**
 23 **any prior damage, but when the repairs were completed, I**
 24 **don't recall there being any remaining damage on the**
 25 **vehicle. Now, there may be very minor like a -- it might**

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1 be a door ding I didn't see, but I didn't see any major
 2 prior damage that would warrant a deduction.
 3 Q Okay. And when we look at a prior deduction, that
 4 would -- a prior damage, that would be prior damage to
 5 the vehicle's frame, body, or structure; right?
 6 A I would have to see the terminology used by Autosource.
 7 Q You want to --
 8 A There's a similar document like this which I'm not sure
 9 if you have. It looks similar to this, but it says
 10 "prior damage modifier." (Indicating.)
 11 Q Okay.
 12 A Let's see if you have it.
 13 Q I'm not saying we haven't been given it. We probably
 14 have, but I don't recall seeing it, but --
 15 A And --
 16 Q -- we'll start there.
 17 But you remember there's also a page -- there's also
 18 a page like the last page of Exhibit 2, which is Page 10,
 19 that would also list modifiers for prior damage?
 20 A Correct.
 21 Q Okay. Okay. And then, obviously, you're looking at the
 22 title, and that's to see if it has a salvaged title;
 23 right?
 24 A Correct.
 25 Q Okay. And then these numbers are spit out of here.

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1 Do you do anything to modify or -- scratch that.
 2 Bad question.
 3 You said that this Autosource diminished value was a
 4 guide for you.
 5 What training have you received as to how to modify
 6 or change the numbers put out by the Autosource
 7 diminished value tool in determining how much diminished
 8 value there is?
 9 A I don't change the numbers put out by the Autosource
 10 tool.
 11 Q Okay. So when you use it, whatever the number the tool
 12 does, that's what you'll offer and what you'll pay on the
 13 claim?
 14 A Not always. I just -- to your question, I don't modify
 15 the numbers that it gives out.
 16 Q Okay. Well, what would be a circumstance that you -- is
 17 there a circumstance where you would offer a different
 18 number?
 19 A Yes.
 20 Q And what would be those circumstances?
 21 A If the owner of the vehicle is providing me with
 22 documentation that gives a different amount, I will
 23 review that and consider it.
 24 Q Anything else?
 25 A I have also looked -- depending on what the expectations

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1 of the owner are, the owner may be, I have also looked up
 2 Kelley Blue Book values for -- to determine -- Kelley
 3 Blue Book will rate a vehicle "fair," "average," "good,"
 4 "excellent." And it has a tool that says "how would you
 5 rate my vehicle" -- "how would I rate my vehicle," so if
 6 you answer that questionnaire before the loss, and then
 7 one of the questions I believe is repairs that -- has it
 8 been repaired -- and I don't remember the exact way it
 9 words the question -- it will downgrade the rating of
 10 that vehicle, and then so there's a difference of value
 11 based on how Kelley Blue Book will rate it. And it might
 12 give me a number -- and typically within a ballpark. It
 13 may be a little lower. It may be a little higher, but it
 14 gives me something if I'm going to increase my offer
 15 to -- to look at and say "here's another source that gave
 16 me a number to work with."
 17 Q Okay. So what you've told me is you'll look at the --
 18 any estimate that they've given you as to the amount of
 19 the loss, and sometimes you'll go to Kelley Blue Book,
 20 and under Kelley Blue Book, if a vehicle has had prior
 21 damage to it, Kelley Blue Book reduces the condition
 22 rating or the vehicle; right?
 23 A Not prior damage, but prior repairs.
 24 Q Prior repairs.
 25 A I think -- I believe it says it has been repaired. I

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1 don't remember the exact wording, but it's another tool
 2 for me to use in addition to this to help me reach an
 3 agreement with the owner. (Indicating.)
 4 Q Okay. Does that just bump down the condition? So if
 5 your car was originally good, it becomes fair. If it was
 6 excellent, it becomes good?
 7 A Correct. It might bump up from either excellent to fair
 8 or good to fair.
 9 Q Okay. Okay. Does Kelley Blue Book draw a distinction
 10 between -- like the Autosource does, between the
 11 extensiveness of the damage?
 12 A I believe there's one or two questions. Once again, it's
 13 a "check the boxes that apply to your vehicle and we'll
 14 tell you what the rating is." And I don't recall exactly
 15 the way it's -- the terminology used.
 16 Q Okay. So but you'll go and pull the Kelley Blue Book
 17 "rate my vehicle" and then see what difference that makes
 18 in the vehicle's value; right?
 19 A Sometimes.
 20 Q Sometimes?
 21 A It's another resource I can use.
 22 Q Okay. How did you hear about that? Did somebody at Am
 23 Fam tell you you can do that, you could use it, or is it
 24 just something you've used more --
 25 A I've learned and reviewed it with my manager.

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12 (Pages 45 to 48)

1 Q Okay. Do you know other people in American Family do
 2 that?
 3 A I have -- I have showed other people how to do it.
 4 Whether or not they've implemented it, I don't know.
 5 Q Okay. But, certainly, you're not doing this without
 6 authorization?
 7 A No. I review -- before any numbers are -- any offers are
 8 made, I review my methodology with my manager. I might
 9 have a range depending on what this says, what Kelley
 10 Blue Book say, based on what the owner has provided me,
 11 and any other documentation I have. I'll review it with
 12 my manager either in person or over the phone, and he
 13 will either agree or modify my -- my offer.
 14 Q Okay. Now, what are you looking at when you look at a --
 15 an estimate of loss for diminished value that a client
 16 has given you? I'm using the term "client." It can be
 17 either your insured or a claimant. What are you looking
 18 for and what are you looking to see in an estimate of
 19 loss that somebody provides to you?
 20 A Like some kind of an appraisal they've provided?
 21 Q Yeah. I mean, what -- I mean, you said you'll look at
 22 whatever they give you. What's going through your mind
 23 and what are you looking for? What are you wanting to
 24 see or, you know, find credible or not credible when you
 25 look at an appraisal of loss or an estimate of loss or

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1 whatever they submit?
 2 A I'm looking at who it's from and what's their
 3 methodology. The two ones I've typically have seen,
 4 maybe the only two I've seen is maybe something from a
 5 dealership that says "we will give this much less on a
 6 trade-in," and then I've seen actual appraisals done
 7 where they will have numbers. I'm not sure where they
 8 come up with all their numbers. They come up with a lot
 9 of numbers to say, "In our opinion, this is the loss of
 10 value."
 11 Q So what do you -- when you get dealer quotes saying "this
 12 is how much less we give on a trade-in," what do you do
 13 with those?
 14 A What do you mean?
 15 Q I mean, do you credit them? Do you not credit them? I
 16 mean, how do you... (Pause.)
 17 A I review them as part of the overall analysis, and some
 18 are reasonable and some I think are unrealistic. I
 19 also -- during the conversation with the owner, I'll say,
 20 you know, "This is a negotiation as you" -- "once you're
 21 trading in your vehicle. I don't believe this is set in
 22 stone, but rather something to negotiate with the
 23 dealership," so it's part of my overall evaluation.
 24 Q When you're evaluating the dealer quotes, are you looking
 25 also at the same time at how severe the damage was to the

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1 vehicle that was repaired?
 2 A Well, that's already been taken into consideration with
 3 the Autosource tool.
 4 Q I understand that.
 5 The Autosource tool does it, but I'm saying when
 6 you're looking at a -- trade-in quotes from a dealership,
 7 are you also considering that as part of it?
 8 A I have always taken into consideration the severity of
 9 the damage to the vehicle.
 10 Q Meaning, for instance, if you're getting some dealership
 11 quotes on trade-in and if a car has been pretty severely
 12 damaged, you know, the same way the Autosource tool would
 13 say you've got frame damage or structural damage and, you
 14 know, major panels have been repaired or replaced, you're
 15 going to review that and expect to see a higher number
 16 than, for instance, a car that has had minor damage to
 17 it?
 18 A I don't know what methodology the dealership did to write
 19 up their letter, but I do take into consideration the
 20 severity. Now, whether -- how much the dealership knows
 21 is purely based on what the customer has told them, and
 22 it may not be -- it may or may not be accurate
 23 information.
 24 Q Okay. Now, when you get an appraisal, how do you deal
 25 with those?

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1 A I review them. And they're -- I take them into
 2 consideration. I have seen some that have been extremely
 3 high and unrealistic, and I've seen some that are
 4 right -- that I think is a reasonable amount. And I will
 5 review those with my manager, and if -- at times we have
 6 gone with what the appraisal has said, if we think it's a
 7 reasonable amount and their methodology makes sense.
 8 Q What do you want to see in a methodology that makes
 9 sense?
 10 A I've seen some with very unrealistic numbers where it
 11 seems like they're just pulling numbers. They're basing
 12 it on their opinion versus -- I've also -- I believe I've
 13 seen some based on more historical data, and I
 14 typically -- those seem to be more realistic numbers
 15 versus, "in my opinion, it's gone down this much."
 16 Q Historical data of the sales of repaired cars that have
 17 been sold versus non-repaired cars that have been sold,
 18 or what historical data?
 19 A It's hard to say because I'm trying to remember one that
 20 I saw a while ago that did have reference to some kind of
 21 historical data, so I don't want to speak to exactly what
 22 it said.
 23 Q Are you looking at appraisals to see if they're listing
 24 particular comparable sales of vehicles that have been
 25 damaged and repaired versus undamaged vehicles? Have you

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1 seen any like that?
 2 **A Can you rephrase that?**
 3 **Q** Have you seen any appraisals that have been based upon
 4 comparable sales, sales of vehicles that have been
 5 damaged and repaired versus the same vehicle that has
 6 been undamaged?
 7 **A Not that I can recall.**
 8 **Q** Would you want to see that?
 9 **A If -- I would be -- I would review anything they provide.**
 10 **Q** Okay. Well, when you do total losses and you're
 11 assessing a total loss, you're looking to find comparable
 12 vehicles; right?
 13 **A Correct.**
 14 **Q** And one of the ways you can assess the value of something
 15 is to look at comparable sales; right?
 16 **A Yes.**
 17 **Q** So that -- in this case, you want to look at comparable
 18 sales of vehicles that have been damaged and repaired as
 19 compared to the same type of vehicles that hadn't been
 20 damaged and have been sold; right?
 21 **A It depends on the data, if it's good comparables.**
 22 **Q** Yeah.
 23 **A I mean, we're talking about looking at the same year,**
 24 **make, and model, similar mileage, similar condition with**
 25 **or without prior damage with similar repair damage.**

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1 **Q** Do you know what a regression analysis is?
 2 **A I've heard of it but couldn't define it for you.**
 3 **Q** You're a computer science major, so I thought maybe you'd
 4 know.
 5 **A There's probably a class I took of it somewhere many**
 6 **years ago.**
 7 **Q** Okay. I won't --
 8 **MR. BENNETT:** Do you want to hire him?
 9 **MR. NEALEY:** No. I won't ask any more
 10 questions. If he knew something about regression
 11 analysis, I'd ask him.
 12 **Q** (By Mr. Nealey) Okay. I'm going to switch to another
 13 area here.
 14 We can take a short break, if you want to, or we can
 15 just keep going.
 16 **A I'm okay.**
 17 **MR. NEALEY:** You okay? (Indicating.)
 18 **THE COURT REPORTER:** Uh-huh.
 19 **MR. NEALEY:** I have to be careful of
 20 our court reporter here. The reporter has a couple more
 21 weeks before she's still here.
 22 **MR. BENNETT:** Is that how close it is?
 23 **THE COURT REPORTER:** Yeah. Well, I'm
 24 due in a month, but I take maternity leave in two weeks.
 25 **MR. BENNETT:** All right.

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1 **Q** (By Mr. Nealey) I'm going to give you a copy of Bryce
 2 Meyer's policy, which I'll mark as Exhibit 3. And I have
 3 some questions about the policy, and if you -- if you're
 4 familiar with it, great, I'll ask you; and if you're not,
 5 feel free to tell me.
 6 **A Okay.**
 7 **(Exhibit No. 3 marked for**
 8 **identification.)**
 9
 10 **Q** (By Mr. Nealey) I'm not -- I mean, I know you handle
 11 certain portions of claims. I'm not sure exactly what
 12 you handle, so let me ask -- this is -- Exhibit 3 is
 13 Bates No. Policy M-001 to 0025.
 14 And have you read the Am Fam policy? You've
 15 probably done so a number of times.
 16 **A I refer to it as needed on a case-by-case basis.**
 17 **Q** Okay. This has a -- this appears to be the policy that
 18 was enforced on Mr. Meyer's accident of April 14th, 2014,
 19 so it would be the current policy. And if you look at
 20 Page 5 of 8, which is Bates No. 008 -- there's little
 21 numbers at the bottom which lawyers put on them to make
 22 it easy to find things -- and under here, it says, "Loss
 23 means direct and accidental loss of or damage to your
 24 insured car and its equipment. Loss does not mean any
 25 difference in the market value of your insured car

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1 immediately prior to the loss and the market value of the
 2 insured car after repairs from the loss are completed."
 3 Are you familiar with this as a language to exclude
 4 diminished value from coverage in the first-party
 5 comprehensive and collision coverages?
 6 **A Yes.**
 7 **Q** Okay. And is it fair to say that damage to the vehicle
 8 under the comprehensive and collision coverages is a
 9 trigger to coverage?
 10 **A I don't know if it's the only trigger, but it is a**
 11 **trigger for coverage.**
 12 **Q** Okay. And that's because you can have a trigger --
 13 trigger the vehicle -- damage to the vehicle can trigger
 14 coverage, but I guess also the vehicle being stolen or
 15 lost can trigger coverage; right?
 16 **A Correct.**
 17 **Q** So one way you get coverage is to have physical damage to
 18 the vehicle that triggers coverage; right?
 19 **A Correct.**
 20 **Q** And the second way is you can have -- the vehicle could
 21 be lost, which would be a theft; right?
 22 **A Correct.**
 23 **Q** Okay. Okay. And here it says, "Loss does not mean any
 24 difference in the market value of your insured car," so
 25 this means that diminished value is not triggered by loss

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1 of the vehicle?
 2 **A It's saying -- my understanding, it's saying loss of**
 3 **value is not covered under first-party coverage.**
 4 Q Okay. Okay. And if we look at the definition here, we
 5 talk about the market value of the insured car
 6 immediately prior to the loss and the market value of the
 7 insured car after repairs.
 8 That would be the same definition of diminished
 9 value that you gave me earlier; right?
 10 **A Yes.**
 11 Q Okay. Now, moving forwards to Page 23 of this, which is
 12 Bates No. 23, I should say, and under Page 23, this is
 13 the uninsured motorist coverages, and if we look at Point
 14 2, which would be B(2), which is only -- right there,
 15 yes, you found it, it says, "Property damage means damage
 16 to or destruction of your insured car. It does not
 17 include loss of use."
 18 UIM coverage is triggered by property damage to the
 19 vehicle? That's the trigger? (Indicating.)
 20 **A I would agree with that.**
 21 Q Okay. And there is one -- you said there are multiple
 22 triggers. And in the case of a vehicle that has not been
 23 touched in a hit and run, the trigger for coverage in
 24 addition to there being property damage to the vehicle
 25 would be found under A(2)?

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1 **A Where are you looking?**
 2 Q We're looking right here? (Indicating.)
 3 **A Right here. (Indicating.)**
 4 Q A(2), so in addition to the requirement of property
 5 damage to trigger coverage, the second trigger would be
 6 in the event of a hit-and-run accident where there was no
 7 physical contact, you would have to notify the police and
 8 then have the facts of the accident corroborated; right?
 9 **A Correct.**
 10 Q Okay. But, obviously, if there has been physical contact
 11 between the vehicle, the only trigger coverage under UIM
 12 is property damage to the vehicle?
 13 **A Based on this right here, I would agree with that.**
 14 **(Indicating.)**
 15 Q Okay. Now, in the insuring agreement under the UIM is
 16 found on Page 24 under C; correct?
 17 **A Correct.**
 18 Q "We will pay compensatory damage an insured person is
 19 legally entitled to recover from the owner or operator of
 20 an underinsured motor vehicle because of" -- in this
 21 case, it's "B" -- "property damage caused by an accident
 22 and underinsured motorist - property damage is shown on
 23 the declarations."
 24 So the insuring agreement pays for property damage
 25 that is caused by the accident; right?

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1 **A Can you repeat the question?**
 2 Q The -- under UIM under the American Family policy, you
 3 can recover for property damage caused by an accident;
 4 right?
 5 **A Correct.**
 6 Q Okay. And in Mr. Meyer's case, because his vehicle was
 7 involved in an accident that was UIM and had property
 8 damage, he has coverage for uninsured -- he has coverage
 9 for diminished value, which is why you ran the tool;
 10 right?
 11 **A He has coverage for property damage. And in this case,**
 12 **after evaluating, I determined there was a loss of value**
 13 **that, in my opinion, was considered some property damage.**
 14 Q Okay. Well, and that's sort of my question.
 15 The Autosource tool doesn't ask you if you've got
 16 property damage on the vehicle; right?
 17 **A Well, it asks for the severity of damage, so what do you**
 18 **mean by the question?**
 19 Q Well, okay. And when we say -- the Autosource tool is
 20 asking you whether the vehicle has property damage;
 21 right?
 22 **A The Autosource tool is asking for the severity of the**
 23 **repairs.**
 24 Q Yes. Yeah. And those repairs are because the vehicle
 25 has property damage; right?

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1 **A The damage to his vehicle was caused by a hit-and-run**
 2 **vehicle which sustained property damage.**
 3 Q Okay.
 4 **A But the Autosource tool isn't making coverage decisions.**
 5 **It's simply asking for what is the repairs done to the**
 6 **vehicle.**
 7 Q I understand that. So -- but in the case of Mr. Meyer's
 8 vehicle, Mr. Meyer had property damage on his vehicle?
 9 He had damage; right?
 10 **A There was damage done by another vehicle.**
 11 Q Okay. Agreed.
 12 And he had property damage which required repair;
 13 right?
 14 **A Yes. I would agree with that.**
 15 Q And that triggered coverage for, in this case, diminished
 16 value?
 17 **A That, in itself, did not trigger the coverage. He made a**
 18 **claim that his vehicle had gone down in value. And after**
 19 **it was evaluated, it was determined it did go down in**
 20 **value, which does fit the definition, which does, in my**
 21 **opinion, qualify as property damage.**
 22 Q Okay. Because his car was worth less afterwards as a
 23 result of the fact that it had had property damage done
 24 to it? It had property damage, it was repaired, and it's
 25 worth less as a result, and, therefore, that loss was

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15 (Pages 57 to 60)

1 caused by the property damage?
 2 **A Is that a question?**
 3 Q Yeah. Is that a correct --
 4 **A Can you repeat the question?**
 5 Q -- statement?
 6 Well, yeah.
 7 So when we look at this, Mr. Meyer's vehicle had
 8 property damage which triggered coverage. It was
 9 repaired, but it's worth less after the repairs according
 10 to the tool, and, therefore, that property damage caused
 11 the reduction in value, and, therefore, there's coverage?
 12 **A I would say the reduction in value is caused by the**
 13 **market's opinion that it has gone down in value. The**
 14 **damage in and of itself did not cause it to go down in**
 15 **value, in my opinion, but, rather, the marketplace saying**
 16 **after a vehicle has been in a loss, we'll pay less for a**
 17 **vehicle.**
 18 Q The market value though is reflecting what's actually on
 19 the vehicle; right?
 20 **A The market value is determined by the market.**
 21 Q Yeah. But let me put it this way: If you go out and
 22 look at a vehicle, you do reinspections, you can go look
 23 at a vehicle and you can tell where it's been repaired;
 24 right?
 25 **A Not always.**

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1 Q Not always, but most of the time; right?
 2 **A No. I can tell where it's been repaired because that**
 3 **area usual looks nicer than the rest of the vehicle, but**
 4 **I can't -- I wouldn't say -- I'm not looking -- I'm not**
 5 **seeing defects that say, "Yeah, it's clear it's been**
 6 **repaired." I can have the estimate showing where the**
 7 **repairs were done and look at the area and tell repairs**
 8 **were done there because usually it's newer paint and**
 9 **newer parts and -- and recently all cleaned, but I cannot**
 10 **typically look at a car and see that there has been**
 11 **repairs done. To put it another way, a month later, I**
 12 **cannot walk -- in my opinion, probably not walk up to a**
 13 **car and tell repairs have been done.**
 14 Q Have you ever looked at vehicles and done reinspections
 15 several years down the road?
 16 **A Not that I can recall.**
 17 Q So you've never done circumstances where you've looked to
 18 see what happens to repaired areas of a vehicle two or
 19 three years down the road?
 20 **A I've had -- they're rare, but under the CRP warranties,**
 21 **some repairs might fail, could be a part failed, it could**
 22 **be a failure of the paint and they've come back for**
 23 **warranty work, but those are particular situations where**
 24 **there's a -- I would say an untypical failure of the**
 25 **repair.**

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1 Q And, of course, to the extent that a vehicle has been
 2 meanwhile sold, people don't know who did the repair
 3 work, and the warranty doesn't follow to a new owner
 4 anyway; right?
 5 **A To my understanding, it doesn't transfer with ownership.**
 6 Q Okay. So the only time you're ever going to see a
 7 vehicle was if somebody wanted -- number 1, knew that it
 8 was repaired; and, number 2, it was the person who had it
 9 repaired? Once the vehicle has been sold or transferred,
 10 that warranty no longer exists; right?
 11 **A I've never had any dealings with that situation, with**
 12 **transferred ownership.**
 13 Q And, of course, if it was transferred ownership, they
 14 wouldn't know to come to American Family anyway; right?
 15 **A Unless the seller disclosed it, they wouldn't know.**
 16 Q Okay. Well, you've got a tool that says that the market
 17 value has decreased.
 18 How does the -- how does the market know to decrease
 19 the value of a vehicle then?
 20 MR. BENNETT: Object to form;
 21 foundation.
 22 Q (By Mr. Nealey) To the extent you know.
 23 **A Could you say the question again?**
 24 Q Let me ask it a different way.
 25 Okay. We've got Mr. Meyer's vehicle, which you've

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1 inspected multiple times, obviously, and you know what
 2 the issues are, and let's assume that we had Mr. Meyer's
 3 exact same vehicle but had never been in an accident,
 4 okay, the two vehicles are next to each other and you're
 5 given a choice of taking one vehicle or another, which
 6 are you going to take?
 7 **A Well, I disagree they would be identical in every way.**
 8 Q I'm just saying somebody searched the entire country.
 9 They found the exact same tri-coat yellow, same
 10 options -- they made I think 2,500 of the tri-coat yellow
 11 color -- and it has the same mileage, same car but one is
 12 Mr. Meyer's car that's been through the accident that
 13 you've seen and had the repair work done on it and the
 14 other one hasn't been in a wreck.
 15 Which one are you going to take?
 16 **A One, it would depend on the repairs that were done. You**
 17 **gave me one specific example, but I wouldn't make this**
 18 **blanket statement over all repairs. If they were**
 19 **identical in every way, which I don't think is possible,**
 20 **and -- I would -- and if they were the same price, I**
 21 **would take the one that was not -- ever been repaired.**
 22 Q And is that because if you took the one that's been
 23 repaired, you may have issues with the paint down the
 24 road, you may have issues with the repair down the road?
 25 **A No. Rather, it's -- I think a car is best when it's --**

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16 (Pages 61 to 64)

1 let me rephrase. If it's not broke, don't fix it, so if
 2 I have one that's never been damaged and somehow I have
 3 the choice of having the two, I'll choose the one that
 4 hasn't been damaged. It's very possible there won't be
 5 any problems ever down the road with the other one, but
 6 the other one is still in its undamaged state, so to
 7 speak. It's never been in an accident. There's no
 8 reason to -- that's all I'm saying.

9 Q Okay. And whenever you start repairing things and you
 10 don't have the factory paint on it and you've -- you've
 11 put Bondo on it or straightened parts and moved things
 12 around, you don't quite know what's going to happen to
 13 that vehicle in use down the road as opposed to an
 14 undamaged vehicle; right?

15 MR. BENNETT: Objection; form,
 16 foundation.

17 THE WITNESS: I don't necessarily
 18 agree. Any reparable shop gives you a lifetime warranty.
 19 Then there's no reason to think it is going to happen. I
 20 would take the vehicle that's been in the repairs that
 21 this one has been done in, but in your hypothetical, I
 22 had an option of having a completely identical one.

23 Q (By Mr. Nealey) I'll put it another way. If you've got
 24 a completely identical vehicle to Mr. Meyer's vehicle
 25 that's been undamaged in Mr. Meyer's vehicle, the only

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1 reason -- the only way you're going to take Mr. Meyer's
 2 vehicle is if you get a discount on the price on it as
 3 opposed to undamaged; right?

4 A If everything was identical, then it would be a
 5 negotiation tool to possibly lessen the price.

6 Q But, of course, if you're buying Mr. Meyer's vehicle as
 7 opposed to somebody else's vehicle, you don't get any
 8 warranty on those works because whatever the body shop
 9 did, that warranty doesn't transfer to you; right?

10 MR. BENNETT: Object to form;
 11 foundation.

12 THE WITNESS: It's up to the specific
 13 shop's warranty and also if I knew who did the shop -- if
 14 I knew what shop did the work.

15 Q (By Mr. Nealey) but you're in the real auto market.
 16 When Mr. Meyer goes to sell his car or someone else goes
 17 to buy it, they're not going to know who repaired it and
 18 who the insurance company was. They're going to know
 19 they have a vehicle in front of them that they can tell
 20 has had certain particular types of damage to it; right?

21 A I disagree they'll be able to tell it has had damage to
 22 it unless it was disclosed by the owner, in which case,
 23 they would have the information of where it was repaired.

24 Q Have you ever -- have you ever bought and sold cars?

25 A Other than maybe my personal vehicles, no.

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1 Q Okay. Do you know -- do you know what steps dealers take
 2 to inspect vehicles to look for prior damage?

3 A Not specifically, no.

4 Q Okay. So whether auto dealers -- certainly a middleman
 5 in the market -- whether they look for prior damage and
 6 how they look for prior damage, that's not something you
 7 know one way or the other?

8 A Correct.

9 Q So but if you get two vehicles -- you go to a, you know,
 10 car dealer out on International Avenue -- International
 11 Boulevard here and you've got two vehicles, one is Mr.
 12 Meyer's with the damage that Mr. Meyer's has had that you
 13 know that you wouldn't have a warranty on because you
 14 have second position and an undamaged vehicle, would you
 15 have a concern about what might happen to the repaired
 16 areas of Mr. Meyer's vehicle three years from now, four
 17 years from now, five years from now?

18 A I would have concerns about both vehicles because neither
 19 one would have any kind of a warranty on them at that
 20 point. I'm assuming these are identical. And I've seen
 21 failures of OEM vehicles' quality, so I would have the
 22 same concerns for both.

23 Q But you're going to pay less for Mr. Meyer's vehicle?

24 A I would negotiate -- if -- once again, you added a level
 25 into your hypothetical that now it's at the same

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1 dealership, these exact identical cars. My opinion, this
 2 is an unrealistic hypothetical because one might have a
 3 stain in the carpet and I might choose the other one that
 4 has been repaired because I don't have to deal with the
 5 stain in the carpet, but if there are two identical cars
 6 at the dealership and I have full disclosure and know
 7 that this one has been repaired and the extent of the
 8 damages and where it was fixed, I would use that as a
 9 negotiation tactic to see if I could get a lower price.

10 Q And as far as the -- as far as what would happen to a
 11 vehicle three, four, five years after repair, you've
 12 never checked that or studied that?

13 A I've never studied it, no.

14 Q Okay.

15 A Other than my personal -- my work experience. I mean, we
 16 do have a lifetime warranty on our work, and I don't know
 17 of any that have come back for that period of time.

18 Q Okay. Looking at Page 24 of the policy, which I think
 19 you have in front of you, there is a -- under "C" under
 20 the insurance agreement, C(3), it says, "If any suit is
 21 brought by you to determine liability or damages, the
 22 owner or operator of the uninsured motorist vehicle must
 23 be made a defendant and you must notify us of this suit."
 24 That provision is there to deal with the insured
 25 trying to bring an action without American Family being a

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1 part of it?
 2 **A I've never been involved in that process, so I'm not**
 3 **exactly sure what the intent of that is.**
 4 Q Okay.
 5 **A I understand your reading of it, but what --**
 6 Q Okay.
 7 **A -- the reading intends, I --**
 8 Q Okay.
 9 **A -- couldn't tell.**
 10 Q Okay. I understand. If you don't know, you don't know.
 11 Okay. Now, then looking at Page 25 of the policy,
 12 it's under "B" at the top right here. It says, "The
 13 arbitration shall commence within a reasonable period of
 14 time after there is mutual consent of both parties."
 15 Is it your understanding that the arbitration clause
 16 in the UIM coverage requires both parties to agree?
 17 **A I have never been a part of the arbitration clause, but**
 18 **the reading does make it sound like both --**
 19 Q Okay.
 20 **A -- parties need to agree.**
 21 Q Okay. So you've never been involved in one?
 22 **A No.**
 23 Q Okay. Now, since you are, in fact, the person for the
 24 dedicated repair program, I will hand you Exhibit 4,
 25 which I think is your guidelines.

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1 (Exhibit No. 4 marked for
 2 identification.)
 3
 4 Q (By Mr. Nealey) Is that your current guidelines that
 5 cover DRP programs in Washington?
 6 **A I believe so, yes.**
 7 Q Okay. I would just like to ask a couple of questions
 8 about it.
 9 If you turn to Page 4, if you look at -- yeah, I
 10 think the Bates numbers line up, yes, Page 4, right under
 11 it says "keys to customer service." The point right
 12 here, it just says, "We expect all repairs you do to our
 13 customers will be done safely and within industry
 14 standards."
 15 Is that the requirement that you put -- the actual
 16 language there, that DRP shops have to do safely and
 17 within industry standards?
 18 **A Well, this is the document we give to the shops --**
 19 Q Yes.
 20 **A -- so that's what we do expect from the shops.**
 21 Q Yes. Okay. So you're expecting that any DRP shop is
 22 going to repairs cars within industry standards; right?
 23 **A Yes.**
 24 Q Okay. And by that, you mean I-CAR standards or -- or
 25 just general body shop industry standards? What do you

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1 mean by "industry standards"?
 2 **A I would say -- well, the industry standards are**
 3 **determined by the industry and we also wanted to follow**
 4 **I-CAR standards and OEM recommendations --**
 5 Q Okay.
 6 **A -- or take them into consideration.**
 7 Q Okay. If we go to the next page on Page 5 under CRP
 8 shops, that's exactly what it says: "Vehicles must be
 9 repaired following original equipment manufacturer
 10 recommendations and I-CAR standards."
 11 So the repair requirement that you place on your DRP
 12 shops is that they follow OEM requirements or
 13 recommendations if there are any and then I-CAR
 14 standards?
 15 **A This says "taking into account," so how that's**
 16 **translated, but we do want them to take into account OEM**
 17 **recommendations.**
 18 Q Okay. Okay. And then if you go to Page 12, there's a
 19 list here of information that must be on the estimates,
 20 themselves, and when we go through this list, when you do
 21 reinspections, do you check to see if this information is
 22 on the estimate?
 23 **A Sometimes.**
 24 Q Sometimes. Okay.
 25 But the date of loss has to be on there; right?

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1 **A Yes.**
 2 Q Okay. And the type of loss, whether it's a
 3 comprehensive, collision, or liability, has to be on
 4 there?
 5 **A Correct.**
 6 Q And if an estimate says "collision" and the claim becomes
 7 a UIM at some point, is that changed, or would you just
 8 use the terminology "collision"?
 9 **A We use the terminology "collision." Sometimes it's**
 10 **changed to "other," but we prefer it still says**
 11 **"collision."**
 12 Q Okay. So the fact that an estimate says "collision" for
 13 Am Fam, that doesn't mean that it's actually under a
 14 collision coverage as opposed to being UIM?
 15 **A Correct, because there's no UIM option --**
 16 Q Okay.
 17 **A -- I'm aware of under "type of loss."**
 18 Q I'm looking at it saying, "Why do these all say
 19 'collision'?"
 20 Okay. So no UIM coverage.
 21 And then we have a VIN number will be on there and
 22 the year, make, and model will be on there; right?
 23 **A That will be decoded by the VIN.**
 24 Q Okay. And then the points of impact, what is that
 25 supposed to be?

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18 (Pages 69 to 72)

1 **A** There is a part -- like a diagram of the car, and you can
 2 put a checkmark check of where the impact was, so front
 3 right, front rear --
 4 **Q** Okay.
 5 **A** -- something like that.
 6 **Q** So, in this case, Mr. Meyer's car, for instance, would
 7 have a check for the front and a check for the rear?
 8 **A** I would have to see the estimate. A lot of these are
 9 mandatory, meaning the system makes you. I believe it
 10 might be possible to not have the point of impact
 11 checked --
 12 **Q** Okay.
 13 **A** -- and not forced in the shop --
 14 **Q** Okay.
 15 **A** -- so I would have to see what the estimate says.
 16 **Q** Okay. And then it says "loss designation," and then it
 17 says, "Note," "When a vehicle originally thought to be
 18 repairable is later determined to be a total loss, you
 19 must go back to change the loss designation to total
 20 loss."
 21 Is that actually carried out, in your experience?
 22 **A** The system does it automatically. It's flagged at a
 23 certain percentage --
 24 **Q** Okay.
 25 **A** -- and it will say "this has been flagged as a total

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1 loss," and it will put a checkmark on the "total loss"
 2 indicator.
 3 **Q** Okay.
 4 **A** There are -- have been times where shops have, after
 5 completing the estimate, unchecked it because it was
 6 below that, and then it will go -- once again, maybe they
 7 find more damage, it goes back above it, and they might
 8 have to manually check it back on, but the initial time,
 9 it's typically done automatically by --
 10 **Q** Okay.
 11 **A** -- the system.
 12 **Q** Okay. And then one of these things is actual mileage.
 13 Is that generally put in?
 14 **A** Very high majority of the time. If there's not, there's
 15 usually an exception like the display wasn't working.
 16 Very rarely is it an oversight. If it's not there,
 17 usually there's a reason why it's not there.
 18 **Q** Okay.
 19 **A** And I believe it's mandatory field, so the system is
 20 going to force them to put something there.
 21 **Q** So if it's broken, for example, or the battery power is
 22 dead and it's got an electronic one, then you put "zero"
 23 or something like that?
 24 **A** Yeah, not so much for the battery because we expect at
 25 some point they will have power to it if it's repairable,

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1 or if it's a total loss, as long as they can get power to
 2 it, but if they say "zero" and they can select "not
 3 readable" as an option, for Audatex to accept their
 4 "zero," then they'll typically have a comment somewhere
 5 explaining why --
 6 **Q** Okay.
 7 **A** -- they have that.
 8 **Q** Okay. Okay. Now, under Page 13, it says under
 9 "repairs" -- there's a thing that says "repair approach,"
 10 and it lists three in order, to repair damaged parts,
 11 replace with alternative parts, and replace with OEM
 12 parts.
 13 Is that -- is that's what is done in practice by the
 14 DRP shops?
 15 **A** In general, yes.
 16 **Q** Okay. Okay. And then if we look at Page 14, it says
 17 "repairing unrelated damage" -- and I've actually
 18 highlighted it there because we get lost in all kinds of
 19 things -- and it says, "The repair of unrelated and prior
 20 damage is the sole responsibility of the owner.
 21 Unrelated prior damage should be noted in the Audatex
 22 comments section."
 23 That addresses some unrepaired damage from a prior
 24 accident that comes in?
 25 **A** Correct.

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1 **Q** Okay. And do you actually see that people put that in
 2 the comment section, if there's some prior damage on the
 3 vehicle?
 4 **A** I have seen it, yes.
 5 **Q** Okay. And you could tell that by, for instance, on the
 6 rust around an area of prior damage or bad sheet metal?
 7 I mean, how would you tell?
 8 **A** Tell what?
 9 **Q** Tell that there's been prior damage.
 10 **A** This is something the shop puts in there. And some shops
 11 are more specific. Some might list a door ding while one
 12 may overlook it, or if it's more extreme damage, like one
 13 corner is smashed in and we're repairing the other
 14 corner, they'll have that noted typically. Some shops
 15 are more particular about noting than others.
 16 **Q** Okay. But they're supposed to note certainly if there's
 17 some kind of --
 18 **A** We --
 19 **Q** -- unrepaired damage?
 20 **A** We do ask them to note it, yes.
 21 **Q** Okay. And if you were doing a diminished valued
 22 assessment using the Audatex system as one of the things
 23 you do, you check that field to see if the body shop
 24 spotted any prior damage?
 25 **A** That would be part of my analysis, yes. I may miss it,

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1 but that would be something I would look.
 2 Q Okay. Okay. So it's not just that -- when you're
 3 running the Audatex diminished value tool, one of the
 4 things you're looking at is what the body shop actually
 5 saw on the vehicle when they started the repairs; right?
 6 A Yes. I'm looking, but I can't recall a time that's come
 7 into a factor where I've seen prior damage that's
 8 warranted a deduction on a DV that I have handled.
 9 Q Okay. Okay. And one of the other things you look for
 10 for prior damage is you run the -- you run the vehicle's
 11 VIN in the insurance databases you have to see if there's
 12 a prior loss on it; right?
 13 A Yes, I'll run it in ISO.
 14 Q In ISO, okay.
 15 When you run these DV assessments, have you ever
 16 come up with a car that shows up in ISO?
 17 A Have I seen a prior loss on a vehicle?
 18 Q Yeah.
 19 A Yes.
 20 Q Yes. And then you consider that as part of the Audatex
 21 tool?
 22 A I consider that as part of the DV evaluation and how
 23 we'll handle it.
 24 Q Understand. Understand. Okay. Does -- by the way, when
 25 you do a designated repair program -- and you may know

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1 this or may not -- American Family requires the body shop
 2 to use in addition to their guidelines to accept American
 3 Family's labor rates; right?
 4 A Could you repeat the question?
 5 Q In addition to following American Family's guidelines on
 6 adjusting, which we've just looked at, a body shop that's
 7 part of the DRP program for American Family has to accept
 8 American Family's labor rates; right?
 9 A Well, we pay up to the global prevailing rate to any
 10 shop. Whether it's a DRP or non-DRP, we pay the
 11 prevailing rates. The shops have an option of giving us
 12 a discounted rate, but we will pay them up to the global
 13 rate which we pay any shop --
 14 Q Okay.
 15 A -- and not more than that.
 16 Q What do you mean they have the option of giving you a
 17 discount?
 18 A They have an option -- for instance, in the Tacoma area,
 19 the global rate I believe is 50 for sheet metal. They
 20 have the option of giving us a discount of let's say 48.
 21 Q Why would they do that?
 22 A When we rate shops, we use a tool called Performance
 23 Gateway, and it has many metrics to rate them. One of
 24 them is discounts the shop may or may not give us, and
 25 they are optional --

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1 Q Okay.
 2 A -- so it can increase their rating if they give us a
 3 discount on labor rates.
 4 Q Okay. So if I've got two shops and, you know, Shop A is
 5 charging the prevailing labor rate of \$50 and Shop B next
 6 door is giving you a discount to 48, when recommending
 7 where to go to, American Family is going to recommend
 8 somebody go to the 48 shop because it has a lower labor
 9 rate?
 10 A No. If we're looking to add a new shop in my territory,
 11 I typically have a pretty high say in it because I've
 12 worked in this area for a long time. That's probably the
 13 last thing I would look at. There's much more factors
 14 I'll look at than who will give us the cheapest rate.
 15 MR. BENNETT: Let me just say for one
 16 second, I'm going to designate the deposition
 17 confidential under a protective order.
 18 MR. NEALEY: Yeah.
 19 MR. BENNETT: It just seems to me
 20 we're getting into competitive things here.
 21 MR. NEALEY: No problem.
 22 (Discussion off the record.)
 23 (Recess from 11:04 a.m. to
 24 11:12 a.m.)
 25 ///

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1 (Exhibit No. 5 marked for
 2 identification.)
 3
 4 Q (By Mr. Nealey) I'm going to hand you a couple of
 5 documents from the claim before you were directly
 6 involved, although I know you reinspected the vehicle,
 7 and I'm going to go back and look again. I have sections
 8 of the file, and I'll find where it is, but good to know
 9 you reinspected it. I'm going to hand you a page out of
 10 the file that was produced, Page 7, and ask you if you
 11 know what this is. This is Exhibit 5.
 12 A This looks like it's basically a total loss indicator --
 13 Q Okay.
 14 A -- to determine if it's okay for CRP or what to do next
 15 with the vehicle when they first report the claim.
 16 Q Okay. And this is very early in the file, although, for
 17 some reason, the way these things they print out at the
 18 bottom, it doesn't always tell you the add date on
 19 here --
 20 A Okay.
 21 Q -- but that was what my question was, is this done -- it
 22 says 4 to 5 panels damaged, 6 or more panels damaged.
 23 Is this just done when the claim is first reported?
 24 It's a rough check to see if it's going to be a total
 25 loss or not?

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1 **A Yes. I believe it's called a VEA.**
 2 Q Okay.
 3 **A I don't remember what the acronym stands for, but it's**
 4 **basically to help -- and which I've never done one of**
 5 **these. It's basically when they first report the claim**
 6 **so the person who is at the call center who is taking the**
 7 **claim can determine what is the best thing to do with the**
 8 **vehicle now.**
 9 Q Okay. Okay. And under here, it says, "Vehicle damage
 10 and/or comments." It says, "Front bumper hood crushed in
 11 a little and has a crack both rear fenders dents and
 12 trunk is pushed in and driver side wheel is turned in a
 13 little," and it says, "No prior damages."
 14 Does Am Fam ask whenever a claim is made if the
 15 vehicle has prior damage?
 16 **A I believe so, and I believe all this comes from what the**
 17 **owner is telling us when he --**
 18 Q Okay.
 19 **A -- reports the claim.**
 20 Q Okay.
 21 MR. BENNETT: Are you going to do the
 22 claim file for a bit?
 23 MR. NEALEY: Yeah.
 24 MR. BENNETT: Give me 60 seconds.
 25 MR. NEALEY: No problem.

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1 MR. BENNETT: I'm going to grab my
 2 copy.
 3 MR. NEALEY: Perfect. It makes it
 4 easier.
 5 (Pause in the proceedings.)
 6 (Exhibit No. 6 marked for
 7 identification.)
 8
 9 Q (By Mr. Nealey) Okay. I'll give you Exhibit 6, which is
 10 Page No. 11, and it's a note from it looks like Carrie
 11 Bartley.
 12 Is that a person who does coverage for Am Fam?
 13 **A I don't know.**
 14 Q You don't know; okay.
 15 And it just says, "Hi, Jennifer, I apologize this
 16 insured has UMPD coverage. I should have escalated to
 17 branch. I just now did."
 18 Are UIM claims handled differently? Do you know
 19 what's being referred to there?
 20 **A I believe what's happening is it probably started at a**
 21 **call center which handles, for lack of a better word,**
 22 **simpler claims, and I think something like a UIM claim,**
 23 **that's escalated to a casualty adjuster to do a little**
 24 **bit more investigation.**
 25 Q Okay. Is that because before a UIM claim is categorized

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1 as "UIM," that American Family makes a determination
 2 based upon the facts of the accident that it is, in fact,
 3 an UIM claim?
 4 **A Can you repeat the question?**
 5 Q Is that because whenever a claim that comes in that might
 6 be a UIM, American Family makes a determine whether it is
 7 or is not an UIM claim?
 8 **A Yes. They want to do a little more investigation.**
 9 Q Okay. So this is just a note then you believe that would
 10 be escalating it so that it has that determination made
 11 internal to American Family that it is, in fact, a UIM
 12 claim?
 13 **A Yes. I would agree with that.**
 14 Q Okay. And then the file is then noted that that
 15 determination has been made and it's handled from that
 16 point on as a UIM claim?
 17 **A I have seen rare circumstances where they might change**
 18 **the... (Inaudible.)**
 19 THE COURT REPORTER: Can you slow down
 20 just a little bit.
 21 MR. NEALEY: Yeah.
 22 THE WITNESS: Oh, yeah.
 23 THE COURT REPORTER: Repeat that.
 24 THE WITNESS: I've seen rare times
 25 when they may have changed their mind, so I wouldn't have

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1 a blanket statement they says once they decide it's a
 2 done deal, but typically once the casualty adjuster says,
 3 "Okay. This is a UM claim," it proceeds as a UM claim.
 4 Q Okay. And what could be the type of information you
 5 might get -- have you ever found a situation after a
 6 vehicle has been repaired that they've gone back and
 7 reassessed that determination?
 8 **A Not that I can recall.**
 9 Q Okay.
 10 (Exhibit No. 7 marked for
 11 identification.)
 12
 13 Q (By Mr. Nealey) Now, I have -- I'm going to mark as
 14 Exhibit 7 a financial summary and transactions. And
 15 there may be a newer version of this. I apologize.
 16 There was a new link sent to the thing and it didn't work
 17 for me, so this is the old one, but have you seen these
 18 before? And it's just the rundown of what's been paid on
 19 the claims.
 20 **A Yes.**
 21 Q Okay. So obviously, in this case, a check was cut for
 22 whatever it is -- whatever the DV assessment was, 1,200
 23 and change, so that would then be listed on here; is that
 24 correct?
 25 **A It's not listed on here, but yes --**

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21 (Pages 81 to 84)

1 Q Yes.
 2 A -- it would typically be on here.
 3 Q Okay. So if you wanted to find out if DV was paid on a
 4 claim, you would look at the financial summary and
 5 transactions page and it would tell you?
 6 A I would not look at this. I would look at the notes to
 7 determine that.
 8 Q Okay.
 9 A It could simply just say uninsured motorist payment and
 10 you may not know what that's for.
 11 Q Okay. You would want to look at the notes in the file
 12 and see it was a DV?
 13 A I would want to see what that payment was issued for.
 14 Q Okay. Okay. I have a series of e-mails that are back
 15 and forth between you and Mike Harber.
 16 Would those have been incorporated into the "notes"
 17 section of the claim file, or, because of the way this
 18 claim was handled, was it handled a little differently?
 19 A I believe I put most if not all -- I copied and pasted
 20 the e-mails into the claim notes. I also put most --
 21 there's a lot of overlapping e-mails --
 22 Q Yeah.
 23 A -- with the replying. I copied the e-mail, itself, into
 24 the documentation section of ICS.
 25 Q Okay. And you're supposed to do that, but understanding

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1 it doesn't happen 100 percent of the time?
 2 A Not 100 percent.
 3 Q Okay. Okay. Okay. But if you do -- as a field
 4 inspector, if you do a reinspection, that wouldn't show
 5 up in the notes section on this, right, or would it?
 6 A It would.
 7 Q It would.
 8 Okay. Well, then I'll hand you this and mark it as
 9 Exhibit 8 and see if we can find when you did your
 10 reinspection.
 11 (Exhibit No. 8 marked for
 12 identification.)
 13
 14 Q (By Mr. Nealey) This is Bates No. 45 through 58.
 15 MR. BENNETT: And I brought just the
 16 one where you -- where we reproduced it to you.
 17 MR. NEALEY: I'm sorry.
 18 MR. BENNETT: Because your --
 19 MR. NEALEY: Yes, I know.
 20 THE WITNESS: This comment was made
 21 through Audatex.
 22 Q (By Mr. Nealey) Okay.
 23 A So I made the comment in Audatex.
 24 Q Okay.
 25 A Which transferred it into ICS which is why the author is

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1 estimate, because it came from Audatex.
 2 Q Okay.
 3 A But Audatex stamps it me --
 4 Q Okay.
 5 A -- with the note.
 6 Q Okay. Okay. I -- okay. So this would have indicated
 7 that you -- your inspection of the vehicle when it was
 8 being repaired would have happened on approximately April
 9 24th, 2014?
 10 A Correct.
 11 Q Okay. And so you would have entered into Audatex and
 12 then it's just transferred automatically into the
 13 "comments" section?
 14 A Correct.
 15 Q And that is on Bates No. 49 of Exhibit 8. Okay. Good.
 16 (Exhibit No. 9 marked for
 17 identification.)
 18
 19 Q (By Mr. Nealey) I'm going to give you Exhibit 9 and just
 20 ask you if you -- what this is. It's Bates No. 62 --
 21 M-62 to 64.
 22 A This appears to be a first notice of loss when the person
 23 first reported the claim. I have never seen these
 24 particular -- filled these out.
 25 Q Are these generated by the insured, or this is generated

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1 by Am Fam when somebody calls in or initially does the
 2 claim?
 3 A I'm guessing -- I am guessing this is from ICS. You can
 4 click on one of the links in ICS and it gives you this
 5 report. I know the term "first notice of loss" and I
 6 know there's a link in ICS that says "first notice of
 7 loss" which likely gives you this --
 8 Q Okay.
 9 A -- but this is generated by American Family.
 10 Q Okay.
 11 (Exhibit No. 10 marked for
 12 identification.)
 13
 14 Q (By Mr. Nealey) I'm going to mark as Exhibit 10 Bates
 15 No. 77 and 78 and ask you what this is.
 16 A This would be an ISO claim search I'm guessing ran by the
 17 casualty adjuster or the call center to look for any
 18 prior hits -- prior claims on the vehicle. I believe
 19 they do this on every vehicle.
 20 Q Okay. When you went and ran the -- the Audatex
 21 diminished value tool, did you use this search that was
 22 already in the file, or do you run your own search?
 23 A I run my own.
 24 Q Okay. So -- but this is the same database that you would
 25 have used?

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22 (Pages 85 to 88)

<p>1 A Yes.</p> <p>2 Q Okay. Do you know what the source of data is for the ISO</p> <p>3 claim search?</p> <p>4 A My understanding, it's by other insurance companies</p> <p>5 provide this information to ISO.</p> <p>6 Q And Am Fam does as well?</p> <p>7 A As far as I know, yes. I've seen Am Fam losses on these,</p> <p>8 so I'm assuming that comes from American Family.</p> <p>9 Q Okay. And then I'm going to ask you what this is,</p> <p>10 Exhibit 11, if you know. It's American Family M-79 and</p> <p>11 80.</p> <p>12 (Exhibit No. 11 marked for</p> <p>13 identification.)</p> <p>14</p> <p>15 THE WITNESS: I believe these are the</p> <p>16 questions that we were looking at the prior document.</p> <p>17 This is the VEA. This does help them determine if it's a</p> <p>18 total loss or not and what the appropriate thing to do</p> <p>19 with the vehicle. And I believe this is during first</p> <p>20 notice of loss.</p> <p>21 Q (By Mr. Nealey) Okay. So this is run -- Exhibit 11 is</p> <p>22 run, and then when we see the output of that -- we see</p> <p>23 that several places, including Exhibit 9, where it shows</p> <p>24 up on Page 2 right here.</p> <p>25 Is that where the output is? (Indicating.)</p> <p>Page 89</p>	<p>1 going to mark it as Exhibit 12. And this is e-mails.</p> <p>2 The last one is August 28th, 2014, from Mike Harber, and</p> <p>3 it starts with an e-mail that you sent to Mr. Harber on</p> <p>4 July 29th, 2014.</p> <p>5 (Exhibit No. 12 marked for</p> <p>6 identification.)</p> <p>7</p> <p>8 MR. NEALEY: Feel free to -- oh,</p> <p>9 you've got them.</p> <p>10 MR. BENNETT: Well, yeah.</p> <p>11 Q (By Mr. Nealey) The Bates number here I'll read, Bates</p> <p>12 No. HARBER-119 to 131.</p> <p>13 Did you review any of these e-mails or any of the</p> <p>14 correspondence before coming here to testify?</p> <p>15 A Yes, I did.</p> <p>16 Q Okay. Did you review the -- the e-mails back and forth</p> <p>17 between you and Mr. Harber?</p> <p>18 A What do you mean?</p> <p>19 Q Did you review the e-mails between you and Mr. Harber</p> <p>20 before coming here to testify?</p> <p>21 A I refreshed my memory what was in them.</p> <p>22 Q Okay. Okay.</p> <p>23 A Not every one, but I refreshed them.</p> <p>24 Q Okay. I'd like you to turn to, if you can, Bates No.</p> <p>25 126.</p> <p>Page 91</p>
<p>1 A It appears so, but, once again, this is an area I don't</p> <p>2 do, but --</p> <p>3 Q Okay.</p> <p>4 A -- I would assume that, yes.</p> <p>5 Q Okay. So I take it that you became more deeply involved</p> <p>6 in Mr. Meyer's claim and were contacted when Mike Harber</p> <p>7 sent a letter in and he indicated that he was acting as a</p> <p>8 public adjuster for Mr. Meyer?</p> <p>9 A Yes.</p> <p>10 Q Okay. What's your understanding of what a public</p> <p>11 adjuster is?</p> <p>12 A My understanding, it's an individual that an insured can</p> <p>13 hire on their behalf --</p> <p>14 Q Okay.</p> <p>15 A -- to adjust their claim.</p> <p>16 Q Okay. Do you treat -- how often do you have claims where</p> <p>17 the public adjuster gets involved?</p> <p>18 A Very rare, just a few times in my career.</p> <p>19 Q Okay. Did you talk with anyone -- putting aside lawyers,</p> <p>20 did you talk with anyone about that this claim should be</p> <p>21 handled differently or how to handle this claim since a</p> <p>22 public adjuster was involved?</p> <p>23 A No.</p> <p>24 Q I have a series of e-mails which I've taken from Mr.</p> <p>25 Harber's production because they're sequential, and I'm</p> <p>Page 90</p>	<p>1 A (Witness complies.)</p> <p>2 Q And there is -- which is a July 30th e-mail from Mr.</p> <p>3 Harber to yourself and with a cc to Mr. Meyer, and at the</p> <p>4 bottom of the page, do you see the e-mail from Mike</p> <p>5 Harber to yourself?</p> <p>6 A Uh-huh.</p> <p>7 Q And he listed a couple of things, and I would like to</p> <p>8 just ask you about the eventual outcome of those.</p> <p>9 A Okay.</p> <p>10 Q Mr. Harber listed that the trunk in Mr. Meyer's vehicle</p> <p>11 had standing water in it.</p> <p>12 Would you attribute the fact that Mr. Meyer's trunk</p> <p>13 had standing water in it to anything other than the</p> <p>14 possible issues with the first repair of the vehicle?</p> <p>15 A I was never given any evidence other than his claim that</p> <p>16 he saw it, the standing water, and he never provided me</p> <p>17 with any documentation or photos to show that it was --</p> <p>18 that there was standing water in the trunk, so I don't</p> <p>19 know when or why there was standing water in his trunk.</p> <p>20 Q When you inspected the vehicle -- you inspected this</p> <p>21 vehicle on the 28th; right?</p> <p>22 A I would have to -- the first time I inspected it was once</p> <p>23 it was dropped off at Metro.</p> <p>24 Q Uh-huh.</p> <p>25 A And it would have been on or about the 28th.</p> <p>Page 92</p>

1 Q Okay. So, I mean, you've already inspected the vehicle
 2 at this point.
 3 Did you look for standing water?
 4 **A Yes. There was no standing water.**
 5 Q Did you see moisture in the trunk?
 6 **A No.**
 7 Q Okay.
 8 **A It had been a very hot summer.**
 9 Q Okay. How about that the tail lamp pockets had mounting
 10 holes slotted to make the lamp lights fit; did you find
 11 that in the vehicle?
 12 **A I saw damage to the holes around where the taillights go**
 13 **in. I don't -- I don't agree that they were slotted. In**
 14 **my opinion, they were more likely from the new loss.**
 15 Q So we understand here, the taillight pockets have a
 16 mounting hole, and that is a round hole; right?
 17 **A Correct.**
 18 Q Okay. And when you looked at the vehicle, the hole is no
 19 longer round? It's been pulled out one direction; right?
 20 **A There was damage to the hole.**
 21 Q Okay. And your contention would be that that damage to
 22 the hole was in the second accident?
 23 **A Let me rephrase. I don't believe it was done by**
 24 **Barrett's Collision, by the previous repairs as he was**
 25 **claiming. To me, it was more likely a result of the**

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1 **second loss unless there's a third factor I'm not aware**
 2 **of.**
 3 Q Are you aware of a collision like Mr. Meyer's vehicle a
 4 second time to the rear that that would have enough force
 5 that it would cause the bolts to sheer through sheet
 6 metal off to the side?
 7 **A Can you rephrase?**
 8 Q Let me back up and see if I can lay a foundation in an
 9 appropriate way, not a way certain judges think of it.
 10 So you would agree that the -- that where the --
 11 that where the lamp light pockets were and the mounting
 12 holes were there, that the holes are no longer round but
 13 they have been pulled off to one side; right?
 14 **A I would say they have been damaged.**
 15 Q Okay. They've been damaged.
 16 And there's two possible explanations for why
 17 they're that way. The first one is that in the -- one of
 18 the collisions, the first collision or the second
 19 collision, that the whole light assembly moved over and
 20 the bolts that are through there had then pulled the
 21 sheet metal off and tore it in one direction; right?
 22 **A Say that again.**
 23 Q One of the explanations is that an accident, either the
 24 first accident or the second accident, that the bolts had
 25 actually -- the whole assembly had been hit hard enough

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1 that it pulled the bolt through the sheet metal off to
 2 the side; right?
 3 **A That is one possibility.**
 4 Q Okay. And the second possibility is that in order to get
 5 it fit, somebody put a screwdriver on there and hammered
 6 the screwdriver which moved it over so you could tighten
 7 it up outside of the normal area where the hole would be;
 8 right?
 9 **A That is possible.**
 10 Q Okay. Do you have any evidence that the force of the
 11 second collision was great enough that it would have
 12 caused the whole taillight assembly to move over and
 13 sheer through sheet metal?
 14 **A No.**
 15 Q Okay. And, in fact, in the rear of this vehicle in the
 16 first accident that was done -- the repairs were done by
 17 Barrett's -- the bumper cover was replaced but also the
 18 energy absorbers and the piece under the bumper; right?
 19 **A I would have to check the estimate, but I believe the**
 20 **bumper cover was repaired.**
 21 Q But the energy absorbers and pieces underneath it were
 22 replaced?
 23 **A I would have to double-check the estimate. I believe**
 24 **they were.**
 25 Q Okay. I'd be happy to pull the estimate --

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1 **A Okay.**
 2 Q -- to help you. I've got a copy of it here. Of course,
 3 that requires me to find it.
 4 I'm sort of mystified here. Sorry. I'm trying to
 5 find the final estimate. I am used to seeing what is
 6 called an "estimate of record."
 7 **A If I may, I believe that was the final estimate that you**
 8 **have there.**
 9 Q Okay. I'll ask you to go through this. This is the
 10 whole packet of all the estimates, but it's listed as
 11 Supplement 4. And I'm used to seeing the terminology
 12 "estimate of record" on there, and maybe you just used
 13 different terminology.
 14 **A (Witness peruses document.) This one. (Indicating.)**
 15 Q Okay. So the final estimate is what is marked -- what is
 16 marked as Supplement 4?
 17 **A It appears, so, yes.**
 18 Q Okay. And that is Bates No. 229 through 238, which has
 19 the reconciliation --
 20 THE COURT REPORTER: Has the what?
 21 MR. NEALEY: Has the reconciliation on
 22 it.
 23 Q (By Mr. Nealey) Okay. So we'll call this the final
 24 estimate. And if -- and let me mark that as Exhibit 13.
 25 ///

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1 (Exhibit No. 13 marked for
2 identification.)
3
4 THE WITNESS: So to answer your
5 question, there was a 1-hour repair to the rear bumper
6 cover, itself. We did replace the reinforcement and the
7 absorber.
8 Q (By Mr. Nealey) Okay. And, obviously, as the damage in
9 the back gets more severe, you replace -- you do work on
10 bumper cover and then you have to do work on the pieces
11 underneath it if the energy of the accident is great
12 enough to damage them; right?
13 A If there was damage to the -- behind the bumper, then,
14 yeah, we would address it.
15 Q Okay. Understand.
16 So the damage was severe enough in the first
17 accident repaired by Barrett's that you had to go in and
18 replace the energy absorber and the -- and the -- the
19 energy absorber and the support bar under the bumper;
20 right?
21 A The bumper reinforcement, yes.
22 Q Okay. And you have seen, have you not, the -- the
23 estimate that All State has repaired for the second
24 repair?
25 A Yes.

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1 Q Okay. I'm going to mark as Exhibit 14 a copy of the
2 estimate that was actually produced in a discovery
3 request by American Family to All State, which is the
4 estimate of record on the second accident, All State 2
5 through All State 17.
6 (Exhibit No. 14 marked for
7 identification.)
8
9 Q (By Mr. Nealey) And apart from the first page, which you
10 may not have seen, are you familiar with the rest of the
11 estimate?
12 A I have looked it over one time.
13 Q In the second accident that All State repaired part of,
14 did they have to repair the energy absorber or any of the
15 parts underneath the bumper cover?
16 A The only -- the damage behind the bumper, they have
17 repairs to the floor and the rear body panel, which is
18 behind the reinforcement, but it looks like they just
19 removed and installed the reinforcement. I don't see
20 they replaced the reinforcement or the absorber.
21 Q Okay. Would you agree with me that in an accident where
22 you have to replace the energy absorber and the -- and
23 the support bar is more severe than one where you don't
24 have to replace it and you can just removed those parts
25 and reinstall them?

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1 A Not necessarily.
2 MR. BENNETT: I was just going to
3 object.
4 Objection to form.
5 Go ahead.
6 Q (By Mr. Nealey) What would be your explanation for --
7 for -- what would be your explanation for how it is that
8 on the American Family accident, the first one, that they
9 had to replace the energy absorber and replace the
10 support bar and, yet, those parts could just be pulled
11 off and reinstalled without any repair in the second
12 accident other than the fact that the second accident had
13 less energy than the first?
14 A Where it was hit. Possibly if -- in our case, ours was
15 pushed up against a wall, if I remember correctly. It's
16 possible a vehicle could have rear-ended it and gone
17 underneath those, which would explain the damage to the
18 rear body panel and the floor but not to the
19 reinforcement. It's possible that ours was more severe.
20 I just say there are other factors other than the
21 severity to determine what we replace because I have seen
22 a lot of damage where we've missed bumper reinforcements
23 and they weren't replaced only because they were missed,
24 not because the damage was less or more severe -- I'm
25 sorry, not because the impact was less or more severe.

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1 Q Okay. Now, the third thing that -- going back to Exhibit
2 12, Page 8, Mr. Harber, in his e-mail to you, lists that
3 the bumper cover was glued into place to satisfy the
4 vehicle owner with the fit.
5 Did you ascertain whether that was correct or not
6 correct?
7 A I questioned the Barrett's shop about it. And after
8 talking with them, I had no reason to believe that they
9 did do that. And I have no explanation as to why that
10 glue is there.
11 Q So but you would agree that there was glue underneath the
12 bumper cover?
13 A I did see a blob of glue on the bumper cover.
14 Q To hold the bumper cover in place?
15 A I don't know why it was there.
16 Q Okay.
17 A I saw it off the vehicle.
18 Q Okay. Well, do you have any -- other than gluing the
19 bumper cover in place so that it would try to fit,
20 although the pieces underneath it didn't fit, can you see
21 any reason why the glue would be there, other than to
22 hold the bumper cover in place?
23 A I don't know why someone put glue on it.
24 Q Do you think Mr. Meyer put glue on there?
25 A I don't know why somebody put glue on there.

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1 Q But you would agree that there was glue underneath the
 2 bumper cover when the bumper cover was removed after the
 3 second accident -- scratch that.
 4 You would agree that there was glue under the bumper
 5 cover and you would agree that Barrett's had put that
 6 bumper cover back on the vehicle after repairing it;
 7 right?
 8 **A They did put the bumper cover back on the vehicle after**
 9 **repairing it.**
 10 Q And you would agree that when you looked at it, there was
 11 glue underneath that bumper cover when it was taken off?
 12 **A I saw glue on it when it was at Metro.**
 13 Q Okay. And you would agree that gluing the bumper cover
 14 on to try to get it to fit over the repairs is not an
 15 appropriate repair?
 16 **A I agree with that.**
 17 Q Okay. Now, Mr. Harber then mentions there's also concern
 18 with the movement of the right fender to make the hood
 19 gaps acceptable.
 20 What was your response on that point?
 21 **A There was paint missing on one of the bolts that hold the**
 22 **fender in place which I did agree to pay to touch that**
 23 **fender jam up.**
 24 Q Okay. And I'm going to mark as Exhibit 15 -- and I take
 25 it that this is the amount, Exhibit 15, that you agreed

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1 that you would pay to fix that -- touch up that fender
 2 jam, which is \$91.81?
 3 (Exhibit No. 15 marked for
 4 identification.)
 5
 6 THE WITNESS: Yes.
 7 Q (By Mr. Nealey) Okay. Now, moving forward, if you go to
 8 Page 6 of Exhibit 12, Mr. Harber then raises with you
 9 that -- that the right and left quarter glass was not
 10 repaired -- was not removed and installed nor was the
 11 back glass.
 12 Had you noted that when you had inspected the
 13 vehicle on the 28th?
 14 **A No. When I inspected it, I believe it was just before**
 15 **they started repairs. I didn't know anything about the**
 16 **quarter glass.**
 17 Q Well, you said there were paint issues around the quarter
 18 glass; right?
 19 **A I was able to see minor paint issues where the quarter**
 20 **glass meets the quarter panel.**
 21 Q Okay. So let me see if I can lay the foundation a little
 22 bit here.
 23 So you went and looked at the vehicle on around the
 24 28th of July. And when you went and looked at the
 25 vehicle around the 28th of July, you noticed there were

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1 paint issues around where the quarter glass is and around
 2 where the back glass met the sheet metal; right?
 3 **A No. That was not brought up by Mr. Harber at that time.**
 4 **That was on a second inspection of the vehicle, he had**
 5 **asked me to come out to -- this e-mail was addressing**
 6 **something that he found, and then I came out a second**
 7 **time --**
 8 Q Okay.
 9 **A -- and he pointed that out to me because he did not point**
 10 **those out to me the first time.**
 11 Q Okay. Now I think I understand your answer a little bit
 12 better.
 13 My question was a little different, which is that
 14 when you looked at the vehicle -- you went out and looked
 15 at the vehicle on the 28th, did you look around and see
 16 if there was something else? Did you look at the quarter
 17 glass? Did you look at the back glass? Did you look at
 18 the paint?
 19 **A I inspected -- I did look over the whole vehicle, and I**
 20 **had a long -- an estimate from Metro, and I was mainly**
 21 **there to find out what his concerns were with the repair**
 22 **and quality issues.**
 23 Q Okay.
 24 **A The quarter glass issue, once he did point them out,**
 25 **are -- they are visible, but you have to be looking**

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1 pretty hard, and he, I'm assuming, was not aware of them
 2 at the time of our original inspection, and I did not see
 3 them when I inspected it either.
 4 Q Okay. And that is because if you try to paint around the
 5 glass and you just mask instead of removing it, you end
 6 up with paint edge and paint problems; right?
 7 **A It can happen.**
 8 Q And you were -- they were already beginning to see that a
 9 couple months later on Mr. Meyer's vehicle; right?
 10 **A It's possible it left that way. I don't know if that**
 11 **happened when it left or later. I will add our estimate**
 12 **does have to remove -- does have to mask off the quarter**
 13 **glass. When I reviewed the photos, it does look like**
 14 **they did pull the quarter glass off, and but the estimate**
 15 **does say mask them off, but when we look at the**
 16 **in-process photos at the shop, it does look like they did**
 17 **removed the glass. With that said, I'm not disputing**
 18 **that there was paint issues where the quarter glass meets**
 19 **the --**
 20 Q Well, would you see the same paint issues that you saw
 21 around the -- where the quarter glass meets the body work
 22 unless they had failed to remove the glass?
 23 **A It's hard to say, because even when you pull the glass,**
 24 **you still have to mask off the opening. And, honestly, I**
 25 **couldn't tell exactly what caused what I saw, other than**

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1 say I did see an issue that needed to be corrected.
 2 Q Okay. And there was also issues round where the back
 3 glass was; right?
 4 A There was a very fine white line. I don't know if it was
 5 primer. There was an area where there wasn't yellow
 6 paint. Once again, I don't know if it needed repainting
 7 or rebuffing. I just saw an issue that needed to be
 8 addressed --
 9 Q Okay.
 10 A -- near the back glass.
 11 Q And the back glass was not removed by --
 12 A It was not -- it was not removed.
 13 Sorry.
 14 Q Okay. Okay. Now, would it be traditional in typical
 15 repair process that when you're painting around a glass
 16 area like the back glass or the side glass that you would
 17 remove those and then paint and then reinstall them? Is
 18 that the typical process?
 19 A It's typical both ways. I've seen probably all shops do
 20 it both ways. It depends if there is room to mask it.
 21 It's pretty rare, in my experience, to remove a back
 22 glass unless they have to get paint there as opposed to
 23 just clear coat. Because what's involved in pulling a
 24 back glass, it's better to -- most shops will mask off a
 25 back glass if they can --

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1 Q Would --
 2 A -- and same with -- sorry. Same with quarter glass. If
 3 it can -- if they can do it, most shops will -- in my
 4 experience, will mask it off. I've seen some shops make
 5 the decision to mask the same car that some shops might
 6 make the decision to pull the glass.
 7 Q And, of course, if you don't pull the glass and you mask
 8 it, you can end up with white lines of primer showing
 9 through or problems with the paint later; right?
 10 A Once again, I don't know exactly what I saw, what caused
 11 that, if it was a result of not pulling the glass. What
 12 I saw on the back glass was near the top lip, not really
 13 down in the groove, so whether the glass was pulled or
 14 not, it doesn't appear it would have hindered that area,
 15 so there could have been another cause from that, not
 16 solely that they did not pull the back glass.
 17 Q Okay. Now, on Mr. Meyer's vehicle when it was reported
 18 to you that the connector points for the heating elements
 19 in the back glass were not working and they had Super
 20 Glue on them, right, did you check those? Did you
 21 actually look at the points, the contact points?
 22 A I had the shop send me photos, and I could clearly see
 23 what they were referring to.
 24 Q So the connector points were Super Glued?
 25 A I don't know. I see that the connector point was broken

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1 off. And their claim was that it had been glued back on.
 2 Q Did you ever go look at it to see if it had been glued,
 3 to check for glue?
 4 A I did not look at it for that time --
 5 Q Okay.
 6 A -- for that particular issue.
 7 Q Okay. Did you doubt that there was glue on it?
 8 A I'm not saying that there was or wasn't. I'm not saying
 9 that they're lying, and so, in that case, no, I'm not
 10 saying there wasn't glue on it. I was never disputing
 11 that.
 12 Q Okay. So let's see if we understand.
 13 So definitely you would agree that the connector
 14 points were broken, and that makes -- that makes the --
 15 the functioning of the rear window defogger doesn't work
 16 unless you put a whole new back glass in; right?
 17 A My understanding is that's what they did to correct it,
 18 was to buy a new back glass.
 19 Q Which is a pretty expensive item on that car; right?
 20 A I believe it was. It was like \$400 or something.
 21 Q Okay. And it's clearly broken and you don't -- you don't
 22 have any reason to dispute that there was, in fact, Super
 23 Glue on there that was holding it in place at some point?
 24 A I have no reason to dispute it.
 25 Q Okay. Do you have any reason to suspect that somebody

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1 other than Barrett's put that Super Glue on there?
 2 A I don't know how that was broken. I have no reason to
 3 think it was Barrett's any more reason than I have to
 4 believe it was somebody else.
 5 Q Okay. Well, who else would it have been?
 6 A I mean, we want to talk hypotheticals?
 7 Q Yeah.
 8 A I can load something in my car and break it myself and
 9 glue it myself. It could have been a previous owner. It
 10 could have been a friend that borrowed the car. It could
 11 have been Metro. Somehow that may have been broken by
 12 somebody and somebody may have glued it back on.
 13 Q Well, why would Metro glue it back on?
 14 A I'm not saying they did. I'm just giving you
 15 hypotheticals.
 16 Q Okay. Well, if Barrett's had set about to remove the
 17 back glass and as part of removing it they broke that
 18 connector tab, would Am Fam pay for that, or would they
 19 make Barrett's eat it?
 20 A If something like that were to happen -- and similar
 21 situations do happen in shops. A quarter glass can
 22 break. And I know we're talking about the back glass,
 23 but items can be damaged during the repair process. I
 24 would typically -- I would pay for it at cost, meaning
 25 they wouldn't make a profit, and that's how I've handled

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27 (Pages 105 to 108)

1 similar situations. Barrett's might make the business
 2 decision to take care of it and replace it themselves,
 3 but if they came to me and said, "Hey, we damaged the
 4 back glass during the removal and install process," I
 5 would cover that glass because, in this industry,
 6 sometimes parts are broken. Molding, I have replaced
 7 \$500 moldings that the clip broke on. I don't care about
 8 the price. It's understandable that things can break
 9 during the repair process. Yes, it is. And there would
 10 be no reason to cover it up because I have in the past
 11 paid for items at cost that have been broken.
 12 Q Okay. Meaning that you pay for the part cost at price
 13 but they'd have to do the labor on it?
 14 A No. Meaning they get it at a cheap -- at a wholesale
 15 price and I pay retail. I would pay what their cost to
 16 replace it was.
 17 Q Okay.
 18 A With that said, I mean -- and I would still pay the
 19 remove and install, because if their intent was to remove
 20 and install for the repair process, I would have been
 21 paying that anyway.
 22 Q Okay. I understand.
 23 Now then I'd like to give you Exhibit 16, which I
 24 believe was a second supplement that you agreed to pay.
 25 ///

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1 (Exhibit No. 16 marked for
 2 identification.)
 3
 4 Q (By Mr. Nealey) And is this correct that then as a
 5 result of the further inspection of the vehicle that you
 6 agreed that these were charges that needed to be paid as
 7 a result of what was not done on the first repair?
 8 A These are -- this was revised after the second
 9 reinspection when I saw the paint issues on the quarter
 10 glass and the back glass, and I did not disagree that
 11 they are likely from the repairs that were done for our
 12 loss.
 13 Q Okay. So to summarize then, when we look at Exhibit 16,
 14 Exhibit 16 is what you agreed to pay for dealing with the
 15 fender issues, what you agreed to pay for the back glass
 16 and the quarter glass issues as a result of the paint
 17 quality but does not cover the actual cost of the back
 18 glass and the damage to the connector because you've
 19 declined to pay for that?
 20 A Correct.
 21 Q Okay. Okay. And then I'm going to give you Exhibit 17.
 22 (Exhibit No. 17 marked for
 23 identification.)
 24
 25 Q (By Mr. Nealey) And this is an e-mail I forwarded to me,

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1 so I just printed it out, but it contains the text of an
 2 e-mail that you sent to Mr. Harber and I had Mr. Harber
 3 send to me. And this was an e-mail that you sent on
 4 October 31st.
 5 And is this the final estimate?
 6 A This is the latest one that I have sent to him.
 7 Q Okay. And is this cumulative?
 8 A What do you mean?
 9 Q Is this cumulative, meaning this includes the two prior
 10 supplements in them?
 11 A Yes, yes.
 12 Q Okay. And the only difference between what has been
 13 marked as Exhibit 17 and Exhibit 16 is you included a
 14 little bit of time to repaint the roof of the vehicle; is
 15 that correct?
 16 A Correct.
 17 Q And why did you agree to repaint the roof of the vehicle?
 18 A The previous e-mail to this that I got from Mr. Harber
 19 was -- brought up that they -- one area that, if I
 20 recall, Barrett's did not paint was the roof on this
 21 three-stage paint and it was challenging for them to
 22 match it because we would have the new paint job versus
 23 the factory paint job and he was claiming that the shop
 24 could match both, so I conceded to I will go ahead --
 25 more than conceding to this, I agreed I would paint the

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1 roof to help it with the color match.
 2 Q Would you agree that the original color that Barrett's
 3 put on the car is not exactly the same paint and the same
 4 color as was on the vehicle originally from the factory?
 5 A I will not agree or disagree. I could not tell the
 6 difference. Once again, this was more a concession item
 7 I decided to make, not a I looked at the two colors and
 8 agreed they did not match.
 9 Q Did you go out and they raised the issue of the -- did
 10 you go out and look at the panels they shot with the --
 11 the panels they shot with paint prepared according to the
 12 paint numbers on the paint code versus the roof color,
 13 which was original versus the Barrett's color? Did you
 14 ever go look at the three of them together?
 15 A No, I did not.
 16 Q Okay. But you did know that the repair shop shot paint
 17 panels using the paint code and when they placed them
 18 next to the Barrett color, they were not the same?
 19 A No, I don't. They never showed me that or told me that.
 20 Q So have you looked at this vehicle after -- you've looked
 21 at it twice?
 22 A Twice.
 23 Q Okay. So when this issue with the -- the issues with the
 24 paint color match of the Barrett paint after the first
 25 repair versus the OEM paint and them being different, you

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1 never actually went and looked at the paint panels and
 2 the repair paint that was shot by Metro?
 3 **A No. The first -- the only issue that he brought up to me**
 4 **was this -- as far as -- as far as the second time I**
 5 **looked at the car, this was the first reference he said**
 6 **about needing to paint the roof, which I conceded to, so**
 7 **no, I did not go out there and look at it.**
 8 **Q Okay. Okay. So if I'm understanding, the first**
 9 **inspection you did, you agreed to pay \$91, which was the**
 10 **fender. The second time when it was pointed out, you**
 11 **went out and looked at the car a second time and you**
 12 **determined that, in fact, there were issues around the**
 13 **back glass and the side glass with the paint, and you**
 14 **agreed that you would pay for the removal and**
 15 **reinstallation of those back glass and the side glass;**
 16 **right?**
 17 **A Correct.**
 18 **Q Okay. And the third time when -- during the repair**
 19 **process when Metro went to actually try to shoot the**
 20 **color using the color codes and found that the Barrett**
 21 **paint didn't match what they were getting versus the**
 22 **factory paint, you didn't go look at those three**
 23 **different colors and you conceded the point and agreed**
 24 **you would pay to repaint the hood -- repaint the roof to**
 25 **try to fix that problem?**

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1 MR. BENNETT: Object to the form and
 2 foundation.
 3 THE WITNESS: I didn't agree to the
 4 point there was a color match issue, but I did concede
 5 that since, you know, we did not paint the roof and I
 6 think that's about the only panel that has not been paid,
 7 I would go ahead and take care of it.
 8 **Q (By Mr. Nealey) Okay. But in order to dispute the point**
 9 **about whether there was a difference in the paint, you**
 10 **would have had to go out and looked at the actual**
 11 **repaired panels? The roof with the original paint and**
 12 **then what Metro was shooting, you would have to compare**
 13 **the three of them; right?**
 14 **A If I was going to dispute it, if it was not already done,**
 15 **I would have -- I would have tried to go look at it a**
 16 **third time.**
 17 **Q Okay. So it's not fair to say then that you dispute that**
 18 **there was a color match issue. You would have had to**
 19 **have gone and looked at it to see if you disputed it, and**
 20 **you decided it wasn't worth fighting one way or another,**
 21 **so you accepted there was a color match issue and agreed**
 22 **to just pay to repair the roof rather than looking at the**
 23 **car?**
 24 **A No. I wouldn't say that. A color match issue was never**
 25 **brought up during the first inspection or the second**

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1 inspection. And it is more of a -- I would say more of
 2 just a concessionary item that we elected to make in the
 3 interest of getting this resolved because in his e-mail
 4 prior to this did said -- his e-mail was implying that
 5 there's -- because I already sent him an e-mail saying no
 6 to various other items, and I get this last e-mail with
 7 issues with the back glass and the roof. And after
 8 reviewing with Barrett's about the back glass issue and
 9 there was no evidence that they tried to remove it and
 10 the second item was the roof, I agreed to -- in the
 11 interest of resolving it, to point the roof.
 12 **Q Okay.**
 13 **A But it wasn't made to save time or avoid looking at it a**
 14 **third time.**
 15 **Q No. I'm not trying to suggest that. But I'm saying that**
 16 **if you wanted to make a determination whether, in fact,**
 17 **there was a color match issue or not, you would have had**
 18 **to have gone out and looked at the roof, which is not**
 19 **painted with the Barrett paint, and then at what Metro**
 20 **was shooting on blanks to see what the color match was**
 21 **like to see if there was an issue or not; right?**
 22 **A It would have given me a better understanding of the**
 23 **issue.**
 24 **Q Okay. But since you didn't look at the three of them,**
 25 **you don't know if there was or wasn't a color match**

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1 issue?
 2 **A Not with their final painting, no --**
 3 **Q Okay.**
 4 **A -- other than he never brought up a paint issue before.**
 5 **Q Okay. Well, and, of course, you only know you've got a**
 6 **color match issue when you go to shoot -- when you mix up**
 7 **the paint and shoot a blank to make sure you've got an**
 8 **okay color match; right?**
 9 **A Well, his contention was the roof paint was not matching**
 10 **the Barrett's paint job, and he never pointed that out to**
 11 **me that I can recall on the first or second inspection.**
 12 **Q Did you understand that the -- that the paint that was**
 13 **being shot by Metro using the factory code was or was not**
 14 **matching what Barrett's had put on the car?**
 15 **A Could you repeat it?**
 16 **Q Do you have an understanding whether what Metro shot**
 17 **on -- on sheet metal to test the paint, do you know**
 18 **whether that was or was not matching the color of what**
 19 **Barrett's had put on the car?**
 20 **A I do not know, myself.**
 21 **Q Okay. I'm going to mark Exhibit 18.**
 22 **(Exhibit No. 18 marked for**
 23 **identification.)**
 24 **Q (By Mr. Nealey) At what one point there was a series of**
 25

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1 e-mails. And I marked as Exhibit 18 Bates 134 to 145.
2 There was a couple of e-mails in which Mr. Harber
3 looped in a John C. Roberts. And I think I understood
4 you were on vacation at the time or not available.
5 Who is Mr. Roberts?
6 **A He is my counterpart that handles the north end of**
7 **Washington.**
8 Q Okay. And so you were out and Mr. Roberts stepped in for
9 a couple of these e-mails?
10 **A Yeah. I was on vacation, and when I get an e-mail, it**
11 **says to contact John Roberts if you need immediate**
12 **assistance.**
13 Q Okay. Okay. And I take it that Mr. Roberts didn't
14 eventually make any decisions at all; you were the one to
15 make the decisions on what to do in this?
16 **A Correct.**
17 Q Okay. The last e-mail that I find before your e-mail,
18 which I've printed out as Exhibit 17, I'm going to mark
19 as Exhibit 19, and this is Bates No. 154, which is in
20 October -- I'm sorry. Wrong e-mail. Wrong e-mail.
21 That's not what I wanted. Let's go back.
22 It's Exhibit 19 is Harber 152 and 153. It's an
23 e-mail from you and Mr. Harber on September 16th.
24 (Exhibit No. 19 marked for
25 identification.)

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1 Q (By Mr. Nealey) And between what has been marked as
2 Exhibit 19 and what I've marked as Exhibit 17, did you
3 have any further e-mail correspondence that you remember
4 between yourself and Mr. Harber?
5 MR. BENNETT: 17 is the --
6 MR. NEALEY: 17 is the -- is the
7 e-mail --
8 MR. BENNETT: That's the All State
9 file.
10 MR. NEALEY: No. That's 14.
11 MR. BENNETT: Oh, is that a "4"?
12 Sorry.
13 MR. NEALEY: It's okay. That is a 4,
14 but it could be construed as a 7.
15 MR. BENNETT: Okay.
16 Q (By Mr. Nealey) Do you remember any further
17 communication between yourself and Mr. Harber between
18 that September 26th e-mail that I have marked as Exhibit
19 19 and the Exhibit 17?
20 **A No. I believe this is the last e-mail I got directly**
21 **from Mr. Harber.**
22 Q Okay. Okay. Why the -- why the wait of over a month?
23 **A I believe that was -- let me look. Where is that big**
24 **e-mail packet? All those -- there was --**
25 MR. BENNETT: I think this one is the

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1 one. (Indicating.)
2 THE WITNESS: I believe the last
3 e-mail I sent to Mr. Harber was on September 22nd where
4 it outlined -- scratch that.
5 I'll have to see the e-mails, but basically I sent
6 him a lengthy e-mail outlining our position on the
7 various items, and I think a month had gone by where I
8 get the e-mail about the back glass, so that month I
9 believe was the time between my last e-mail to Mr. Harber
10 and when he sent me an e-mail while I was on vacation.
11 Q (By Mr. Nealey) Okay.
12 **A But from my recollection, he was not waiting for any kind**
13 **of a response from me.**
14 Q Okay. Okay. Let me take a break and let me look at my
15 notes a little bit and I may be done or either close to
16 done.
17 MR. BENNETT: Sure.
18 (Recess from 12:08 p.m. to
19 12:20 p.m.)
20
21 Q (By Mr. Nealey) When you ran the Autosource diminished
22 value assessment, did you consider anything else in
23 reaching a -- a number on Mr. Meyer's loss other than the
24 Autosource diminished value tool?
25 **A Well, in addition to running the tool, I did, you know,**

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1 **run ISO. I ran the VIN. I made sure those --**
2 Q Okay.
3 **A -- the owner -- who the owner was, that there was no**
4 **prior losses, no prior repairs that I'm aware of, and**
5 **with that said, no, I went with the Autosource --**
6 Q Okay.
7 **A -- evaluation.**
8 Q And if you had found there was some sort of a prior
9 accident on the vehicle, you would have reduced the
10 amount that you would have thought was the diminished
11 value on the loss?
12 **A I would have reviewed it with my manage, just say, "Hey,**
13 **how do we want to apply this to this?" It's how bad of a**
14 **severe loss. Was it a minor hit? Was it a \$10,000 hit?**
15 **And that would have come into the evaluation of it.**
16 Q Okay. I have no further questions. Thank you very much.
17 (Deposition concluded at 12:21
18 p.m.)
19 (Signature reserved.)
20
21
22
23
24
25

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1 STATE OF WASHINGTON) I, Laura L. Ohman, CCR, a certified
2) ss court reporter in the State of
3 County of Pierce) Washington, do hereby certify:

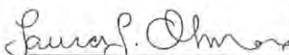
4 That the foregoing deposition of MATTHEW L. FUQUA
5 was taken before me and completed on November 4th, 2014, and
6 thereafter was transcribed under my direction; that the
7 deposition is a full, true and complete transcript of the
8 testimony of said witness, including all questions, answers,
9 objections, motions and exceptions;

10 That the witness, before examination, was by me
11 duly sworn to testify the truth, the whole truth, and
12 nothing but the truth, and that the witness reserved the
13 right of signature;

14 That I am not a relative, employee, attorney or
15 counsel of any party to this action or relative or employee
16 of any such attorney or counsel and that I am not
17 financially interested in the said action or the outcome
18 thereof;

19 That I am herewith securely sealing the said
20 deposition and promptly delivering the same to
21 Attorney Scott P. Nealey.

22 IN WITNESS WHEREOF, I have hereunto set my hand
23 and affixed my official seal this 11th day of November,
24 2014.

25


Laura L. Ohman, CCR
Certified Court Reporter No. 3186



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